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# Vol. I

## TRANSCRIPT OF RECORD

## Supreme Court of the United States

**OCTOBER TERM, 1938**

## No. 314

WICHITA ROYALTY COMPANY ET AL.,
PETITIONERS,

*vs.*

CITY NATIONAL BANK OF WICHITA FALLS ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

**PETITION FOR CERTIORARI FILED AUGUST 30, 1938.**

**CERTIORARI GRANTED OCTOBER 17, 1938.**

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CAPTION.

BE IT REMEMBERED, that at a regular term of the United States District Court in and for the Northern District of Texas, begun and holden at Wichita Falls, Texas, on the 22nd day of March, A. D. 1937, and which said term adjourned on the 9th day of April, A. D. 1937, the Honorable William H. Atwell, United States District Judge for the Northern District of Texas, presiding, the following proceedings were had and the following cause came on for trial and was tried, to-wit:

CITY NATIONAL BANK OF WICHITA FALLS, TEXAS,

Plaintiff,

versus No. 358, In Equity.

WICHITA ROYALTY COMPANY and E. E. SCANNELL, TRUSTEE,

Defendants.

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2 PLAINTIFF'S SECOND AMENDED ORIGINAL PETITION.

Filed May 11, 1936.

In the District Court of Wichita County, Texas, for the 78th Judicial District.

City National Bank of Wichita Falls, Texas,

vs. No. 24549-B.

Wichita Royalty Company, et al.

To the Honorable Judge of Said Court:

The City National Bank of Wichita Falls, Texas, a corporation duly incorporated, comes now and, with leave

of the Court first had and obtained, files its second amended original petition, in lieu of and as a complete substitute for its original petition heretofore filed, and for such amended petition pleads as follows:

I.

That the City National Bank of Wichita Falls, Texas, is a national banking association, but it is now in liquidation, pursuant to the United States statutes regulating the liquidation of national banks, and E. A. Deaton is its duly and legally appointed liquidating agent. It comes and complains of the Wichita Royalty Company, a common-law trust, whose sole trustee is E. E. Scannell, and E. E. Scannell, individually, and also complains of the following additional parties, hereinafter styled defendants, namely, Guy Rogers, individually and as trustee under the will of L. B. Rogers, deceased, Charles L. Black, W. H. Peckham, administrator of the estate of G. W. Peckham, deceased, the Humble Oil & Refining Company, a corporation, the Continental Oil Company, a corporation, and The Texas Company, a corporation, all styled defendants herein, and with respect to the Court the plaintiff shows:

II.

That the Wichita Royalty Company is a common-law trust, operating under a declaration of trust filed and recorded in the Deed Records of Wichita County, Texas,
3 and E. E. Scannell is the trustee named therein and the said E. E. Scannell is a resident citizen of Wichita County, Texas; that Guy Rogers is a resident of Wichita County, Texas, and is sued herein individually and as trustee under the will of L. B. Rogers, deceased; that Charles L. Black is a resident citizen of Travis County, Texas; that W. H. Peckham is the duly appointed administrator of the estate of G. W. Peckham,

deceased, and resides in Wichita County, Texas; that the Humble Oil & Refining Company, the Continental Oil Company, and The Texas Company are each corporations, duly incorporated, with an office and place of business in Wichita County, Texas, and having agents in said county and state upon whom service of citation can be had.

III.

Plaintiff further alleges that the Wichita Royalty Company is a form of association, as aforesaid, commonly known as a common-law trust, the sole management and control of the same being vested under said declaration of trust in a sole trustee, who is E. E. Scannell and who, together with the defendant Guy Rogers, as his attorney, has, from the dates hereinafter alleged, exercised exclusive management of the affairs of said association; that said association has certain shareholders, none of whom reside in the State of Texas, unless it is the said E. E. Scannell, and no process can reach said shareholders under the laws of the State of Texas, so that no judgment can be enforced against said shareholders for the collection of the plaintiff's debt hereinafter alleged.

IV.

That on the 26th day of June, A. D. 1930, the defendant E. E. Scannell, acting as sole trustee for the Wichita Royalty Company and for a valuable consideration, made, executed, and delivered to the plaintiff his certain promissory note in the principal sum of $22,000, due 60
4 days after date and payable to the order of the plaintiff, with interest from date until paid at the rate of eight per cent per annum, which note further provides for 10% attorney's fees, if sued upon or placed in the hands of an attorney for collection and which note is a renewal and extension of an indebtedness owing by

the defendant Wichita Royalty Company to the plaintiff herein for money borrowed at the time G. W. Peckham was the sole trustee and E. E. Scannell was the secretary and treasurer of the said Wichita Royal Company, which money was borrowed in the due and regular course of business, and this note is a renewal and extension of the original notes for which said money was originally borrowed.

V.

That said note is long past due and unpaid; that the plaintiff has placed said note in the hands of its attorneys, who are bringing this suit, and has agreed to pay said attorneys the 10% provided for in said note as attorney's fees, and that the defendant Wichita Royalty Company, though often requested, has wholly failed to pay said note, or any part thereof, to plaintiff's damage in the sum of $40,000.

VI.

This plaintiff says that the Wichita Royalty Company is wholly insolvent; that it is not now and has not been since the maturity of said note, possessed of sufficient assets and properties to pay any substantial part of said indebtedness owing to the plaintiff; that none of its shareholders, unless it be Scannell, who is also unable to pay said indebtedness, reside within the State of Texas; that they are all non-residents of the State of Texas and that no property of the shareholders can be reached by this plaintiff for the satisfaction of its indebtedness, and it is therefore relegated and has at all times been relegated solely to the assets owned and held by the Wichita Royalty Company for the satisfaction of the debts owing by the Wichita Royalty Company to this plaintiff.

VII.

The declaration of trust, which is duly recorded in Volume ...., Page ...., of the Deed Records of Wichita

County, Texas, to which reference is here made, creates a trust for the benefit of the creditors of the Wichita Royalty Company upon the assets of same and which provides as follows:

(A) That the trustee (who is E. E. Scannell) shall hold all of the funds and properties in trust for the purposes and with the powers and limitations set out in the declaration of trust;

(B) It provides for the management of the affairs of said association or trust by one trustee, giving him exclusive power and authority in such management, and provides that all title acquired shall be held in trust by such trustee in his capacity as such;

(C) That any debt incurred by the trustee shall be a charge on the property of the trust in preference to the claim, or claims, of any stockholder as such and that all of the funds and properties of the trust of every character shall stand primarily charged with the burden of paying any claim or money demand established or existing on account of the operations and business of said trust, whether founded on contract or tort, to the end that the stockholders may be protected from personal liability on account thereof;

(D) That said articles of association contained other provisions. It provided for a capital stock of one million dollars; that certificates of beneficial ownership should be issued to shareholders and that the assets of said association should be impressed with a trust and lien for the payment of all the obligations of said trust estate. It contained other provisions, the effect of which was to create for the benefit of the creditors of said association ratably and alike, especially in case of insolvency, a trust fund upon all of the assets of said association and it was therefore the duty of the trustee administering said assets to

treat the same as a trust fund for the benefit of
6 all the creditors of said association ratably and alike, and to suffer no preferential transfers or payments, a violation of which duty would be an act of bad faith on the part of the trustee.

VIII.

That the indebtedness herein sued for is an indebtedness incurred by the trustee in the conduct of the business of said trust and pursuant to the terms and provisions of the articles of association aforesaid.

IX.

That this suit upon this indebtedness was filed on October 11, 1930; that thereafter E. E. Scannell employed the defendant Guy Rogers as his attorney to represent him in said suit, and, since the filing of this suit and prior thereto, this plaintiff alleges that the said E. E. Scannell, in co-operation with Guy Rogers, has been continuously, assiduously, and intentionally diverting the properties and assets of the defendant Wichita Royalty Company from the purposes of said trust and for the purpose of placing the same beyond the reach of the plaintiff herein and the other creditors of the Wichita Royalty Company; that, while the said E. E. Scannell has been purporting to represent the shareholders in an effort to defeat liability to this plaintiff, nevertheless he has been representing himself individually and has been receiving and converting to his own use the funds and monies of said trust and applying the same for purposes not authorized by said trust, and has co-operated with the defendant Guy Rogers in placing the properties and assets of the Wichita Royalty Company beyond the reach of its creditors. In this connection, the plaintiff alleges that certain properties owned by the Wichita Royalty Company are producing royalties, the amount of the

income therefrom being unknown to the plain-
7 tiff, but being well known to the defendants, particularly to the defendant E. E. Scannell, who, with the defendant Guy Rogers, has had charge of all the books and records of the Wichita Royalty Company; that the income from said properties from the date of the filing of said suit has averaged as much as, if not in excess of, $500 per month and that said properties during the period of said litigation have produced substantial sums of money, sufficient, in the judgment of the plaintiff herein, to pay its note and indebtedness, but that all of said funds have been received and collected by the defendant E. E. Scannell and/or his attorney, Guy Rogers, and have been used by said defendants for purposes unauthorized by said declaration of trust. In this connection, the plaintiff alleges upon information and belief that it is the intent of the said defendant E. E. Scannell to use, conceal, and appropriate said funds and the income therefrom so that the assets and properties of the said defendant Wichita Royalty Company cannot and will not be forthcoming or available for the satisfaction of the plaintiff's indebtedness herein, should it be finally determined that the defendant Wichita Royalty Company is indebted to this plaintiff, and to this end the defendants E. E. Scannell and Guy Rogers have conspired and cooperated together in the receipt, collection, and disbursement of all of the income of the Wichita Royalty Company during the whole period of this litigation and are now receiving, collecting and using said income for purposes other than for the satisfaction of this indebtedness or the protection of this creditor, or for the ultimate payment of this debt, should it be ultimately decided that the plaintiff is entitled to recover herein.

8 X.

That, in addition to the appropriation by E. E. Scannell of the income, revenues, receipts, and funds received by the Wichita Royalty Company, the said E. E. Scannell,

acting with the defendant Guy Rogers, have undertaken to and agreed to so place the assets and properties of the Wichita Royalty Company beyond the reach of this creditor, in the event judgment is finally recovered against said company.

XI.

That at the time of the execution of said note and the filing of this suit the Wichita Royalty Company owned valuable royalties, some of which were located and situated in the State of Oklahoma and are described as follows:

In Okmulgee County.

1st—An undivided 1/8th overriding royalty interest in the oil, gas and minerals on the South 1/2 of the S. W. 1/4 of Sec. 34, Township 12 North, Range 12 East, known as the Ellis Holmes Farm in said county, fully described in an instrument dated November 18, 1922, executed by B. L. Fain in favor of First Party herein, which instrument was filed for record Sept. 17, 1924, at one o'clock p. m. and recorded in the Misc. Records at pages 404-5 of Vol. 2 of the Records of said Okmulgee County, reference to which is made for all purposes.

2nd—An undivided 1/4 of the 1/8th royalty on the South 1/2 of the Southwest 1/4th of Sec. 34, Township 12 N., Range 12 E., known as the Ellis Holmes Farm, said interest being fully described in an instrument executed by W. H. Peckham in favor of First Party herein on the 4th day of April, 1923, recorded in Book M 259, Page 261, of the Records of said Okmulgee County, reference to which is made for all purposes.

3rd—18/40ths of the 1/8th royalty on the North 1/2 of the S. W. 1/4 of Sec. 34, Township 12 North, Range

12 E., known as the Ellis Holmes Farm in said county, said interest being fully described in an instrument dated August 1, 1923, executed by W. H. Peckham in favor of First Party herein, which instrument is duly recorded in Book M 259 at Page 262 of the Records of said County, reference to which is made for all purposes.

9 In Noble County.

4th—5/32nds of the 1/8th royalty on the N. W. 1/4 of the S. E. 1/4th of Sec. 10, Township 24 North, Range 1 West, in said county, said interest being fully described in Vol. M-20, at page 466 and in Vol. 20 at 344 and Vol. M-20 at 462 of the Records of said Noble County, reference to which is made for all purposes.

5th—2/72nds of the 1/8th fee royalty on the N. W. 1/4th of Sec. 15, Township 24 N., Range 1 W., known as t' J. W. See farm in said County, said interest being fully described in instruments recorded in Vol. M-20 at page 349 and in Vol. M-20 at page 464 of the Records of said County respectively, reference to which is made for all purposes.

6th—1/256th of the 1/8th fee royalty on lots 1 and 2 and the south 1/2 of the Northeast 1/4 Sec. 3, Township 24 N., Range 1 W., known as the J. Carmichael Farm in said county, which interest is fully described in an instrument recorded in Vol. M-24 at page 10 of the Records of said county, reference to which is made for all purposes.

In Kay County.

7th—1/320th of the 1/8th fee royalty on the N. W. 1/4 of Sec. 34, Township 25 N., Range 1 W., in said county known as the Fred A. Beverlin Farm, said interest being fully described in instruments recorded in Vol. 97 at page

257 of the Records of said County, reference to which is made for all purposes.

8th—3/640ths of the 1/8th fee royalty on the east 1/2 of the Northeast 1/4 Sec. 34, Township 25 N., Range 1 W., known as the W. F. McDaniel farm in said county, which interest is fully described in an instrument recorded in Vol. 97 at page 257 of the Records of said county, reference to which is made for all purposes.

9th—1/64th of the 1/8th fee royalty on the west 1/2 of the N. E. 1/4 of Sec. 34, Township 25 N., Range 1 W., known as the C. W. Goltry farm in said county, which interest is fully described in instruments recorded in Vol. 97 at page 257 of the records of said county, reference to which is made for all purposes.

together with all the improvements thereon and appurtenances thereto belonging.

That said royalties were and are of the reasonable value of at least $5,000; that, in addition to receiving the income and revenues therefrom, the said E. E. Scannell, acting together with the defendant Guy Rogers, have mortgaged said Oklahoma royalties to Guy Rogers and have transferred the income therefrom to the said Guy Rogers, as shown by a transfer and mortgage marked Exhibit "A" and made a part of this petition.

XII.

That the defendant Wichita Royalty Company also owned other valuable royalties located in the State of Texas, an itemized list and description thereof being attached hereto, marked Exhibit "B" and made a part hereof.

XIII.

That after the mortgaging of the Oklahoma properties, the defendant E. E. Scannell, acting in conjunction with

the defendant Guy Rogers, made, executed, and delivered a deed of trust upon all of the remainder of the royalties and assets owned by the said Wichita Royalty Company and made, executed, and delivered to Guy Rogers a transfer and assignment of all the oil and gas and proceeds therefrom produced from said properties, and did thereafter cause a purported foreclosure to be made under said deed of trust; that said deed of trust made no definite description of any properties, but contained a description as follows:

"All and singular the property of the said Wichita Royalty Company situated in the Counties of Archer, Young, Gray and Wheeler, Texas, whether such property be personal or real and whatsoever its description, including the land, interest in land, leases, royalties, mineral estates, leasehold interests, oil and gas rights, minerals, monies due from the sale of minerals, accounts receivable, choses in action, bonuses, rentals and monies due or to become due in lieu of royalty."

That said deed of trust was executed by E. E. Scannell upon the advice of the defendant Guy Rogers and to secure an alleged indebtedness to the defendant Charles L. Black; that, in order to place said properties beyond the reach of this creditor, the defendants E. E. Scannell and Guy Rogers caused a purported sale to be made of all and singular all of said properties by the trustee named in said deed of trust, which trustee was Ray Bland, an attorney associated with the defendant Guy Rogers, and on the 7th day of August, A. D. 1934, the said trustee purported to sell all of the above described properties, including the royalties, wherever situated, all monies due and impounded of every kind and description owned by the Wichita Royalty Company, which sale was purported to have been made at the Courthouse door of Archer County, Texas, and at which sale the defendant Guy Rogers, purporting to act as trustee under the will of L. B. Rogers, his deceased

father, and for the sum and price of $250, bid all of said properties in and caused a deed to be made to him as trustee by the said Ray Bland, trustee under the deed of trust, and caused said trustee's deed to be filed for record in the various counties wherein the royalties were located and situated, including Gray and Wheeler Counties, Texas. A copy of said Trustee's Deed is attached to this petition, marked Exhibit "C" and made a part hereof.

XIV.

That said sale and foreclosure was made, the plaintiff alleges upon information and belief, for the purpose of placing said property beyond the reach of this creditor and in violation of the terms of the declaration of trust and articles of association under which the defendant E. E. Scannell was acting; that the sale was made under a deed of trust given to secure Charles L. Black in the payment of $5,000, or so much thereof as might equal the reasonable value of the professional services to be performed by the said Charles L. Black on behalf of the Wichita Royalty Company, and was given to secure the defendant Guy Rogers in the payment of Court costs and expenses growing out of the litigation herein; that the properties conveyed by the said deed of trust were of the reasonable value of $15,000; that these properties, including the Gray and Wheeler County properties, which royalties had theretofore been disclaimed by the Wichita Royalty Company in a pleading filed in this proceeding by the defendant Guy Rogers, wherein it was claimed that George W. Peckham, a former trustee, was acting for himself individually in the purchase of the royalties in Wheeler and Gray Counties, but that said allegation was made prior to the time the royalties became producing royalties in Wheeler and Gray Counties and after oil was discovered upon said properties and they became valuable properties, which was after the election of the said defendant, Wichita

Royalty Company, to disclaim same, nevertheless they undertook to mortgage all of said royalties in Wheeler and Gray Counties to Charles L. Black and to cause a foreclosure of said mortgage to be made, and a sale of said royalties to be made and a purchase thereof by the defendant Guy Rogers, acting as trustee under the will of L. B. Rogers, deceased, which sale also included all impounded funds and which sale was made for the grossly inadequate sum of $250, which this plaintiff alleges was never actually paid and which sale was void and fraudulent as to this plaintiff.

XV.

That at the time of the various transactions above named, namely, the execution of the mortgage upon the Oklahoma properties, the execution of the deed of trust upon the remaining properties in Texas, the transfer and assignment of the oil and gas from said properties unto the said Guy Rogers, and the sale under the deed of trust by Ray Bland, Trustee, the Wichita Royalty Company was wholly insolvent and was unable to pay its debts; that its assets constituted a trust fund for the ratable
13 payment of all of its indebtedness, including the indebtedness owing to this plaintiff, and that the trustee was without power to prefer one creditor over another or to execute any mortgage or deed of trust on said properties, but was in duty bound in equity to hold said properties for the ratable payment of all of the creditors of the said Wichita Royalty Company and to apply the proceeds and revenues therefrom for said purpose; that by reason of the foregoing facts the defendants Wichita Royalty Company, E. E. Scannell, and Guy Rogers committed a breach of trust, in that the funds and properties of the Wichita Royalty Company were trust funds and they were thereby wrongfully diverted from the ratable payment of all of the indebtedness due and owing by the Wichita Royalty Company.

XVI.

The plaintiff further alleges that long prior to the execution of the deed of trust there was standing in the name of either G. W. Peckham or the Wichita Royalty Company certain royalty interests in Wheeler and Gray Counties, Texas, as follows, to wit:

An undivided one-eighth interest in all of the oil, gas and other minerals, including 1/8 royalty in all oil and gas leases on the following lands in Gray County, Texas, to wit:

The South 1/2 of Sec. 61, Block 25, H. & G. N. Ry. Co. Survey, Gray County, Texas, containing 320 acres, more or less;

The Northwest 1/4 of Sec. 60, Block 25, H. & G. N. Ry. Co. Survey, Gray County, Texas, including 1/8 of the 1/8 royalty interest, containing 160 acres, more or less.

An undivided 1/4 interest in all of the oil, gas, and other minerals, including 1/4 of the 1/8 royalty interest reserved in any oil and gas lease on the following additional lands in Gray County, Texas, to wit:

14 The West ½ of the Southeast ¼ and the Northeast ¼ of the Southeast ¼ of Section 59, Block 25, H. & G. N. Ry. Company Survey, Gray County, Texas, containing 120 acres, more or less.

Also the following royalties in Wheeler County, Texas:

An undivided one-fourth interest in all of the oil, gas, and other minerals, including one-fourth of the one-eighth royalty interest reserved in all oil and gas leases on the following lands in Wheeler County, Texas:

The West ½ of the Southeast ¼ of Section 54, Block 24, H. & G. N. Ry. Co. Survey, containing 80 acres, more or less;

The East ½ of Section 54, Block 24, H. & G. N. Ry. Co. Survey, Wheeler County, Texas, containing 320 acres, more or less.

An undivided ½ interest in and to all of the oil, gas and other minerals, including one-half of the one-eighth royalty reserved in any oil and gas leases on the following lands in Wheeler County, Texas, to wit:

The Northeast ¼ of Section 47, Block 24, H. & G. N. Ry. Co. Survey, in Wheeler County, Texas, containing 160 acres, more or less;

The East ½ of Section 57, Block 24, H. & G. N. Ry. Co. Survey, Wheeler County, Texas, containing 320 acres, more or less;

The North ½ of Section 45, Block 24, H. & G. N. Ry. Co. Survey, in Wheeler County, Texas, containing 320 acres, more or less.

That there was also standing in the name of G. W. Peckham an undivided 15/32nds interest in the oil, gas, and other minerals in the Northeast ¼ of the Northeast ¼ of Section 47, Block 24, H. & G. N. Ry. Co. Survey, Wheeler County, Texas; an undivided 1/64th interest in the oil gas, and other minerals in the West ½ of the Southeast ¼ of Section 43, Block 24, H. & G. N. Ry. Co. Survey, Wheeler County, Texas; and an undivided 7/64ths interest in the East ½ of Section 54, Block 24, H. & G. N. Ry. Co. Survey, Wheeler County, Texas, and an undivided 1/16th interest in the Northwest ¼ of Section 44, Block 24, H. & G. N. Ry. Co. Survey, Wheeler County, Texas. That all of said royalties were purchased by George Peckham while he was acting as trustee for the Wichita Royalty Company and that all of said royalties, the plaintiff alleges upon information and belief, were purchased for the benefit of the Wichita Royalty Company by George Peckham, including those standing in the name of George Peckham not assigned.

XVII.

That it was alleged by the defendant Wichita Royalty Company in a pleading filed herein long prior to the discovery of oil on said lands that said royalties in Wheeler and Gray Counties were purchased by George Peckham from himself at a secret profit to himself and, under such circumstances and with knowledge on the part of the plaintiff bank, charged the said bank with notice that George W. Peckham, as trustee, was dealing with himself individually, all of which allegations were denied and are denied by this plaintiff, but in said pleading filed by the defendant Wichita Royalty Company before the discovery of oil on said Wheeler and Gray County properties and before the same became valuable elected to rescind said sale, and tendered back all of the Gray County and Wheeler County royalties and the said defendant Wichita Royalty Company repudiated said transaction and disclaimed any interest in the royalties above named.

XVIII.

That after the filing of said petition oil was discovered on said lands and they became valuable, and substantial sums have been received either by the defendant E. E. Scannell, as trustee, or by the defendant oil companies hereinabove named, and impounded, and, since said properties became valuable, the defendant Wichita
16 Royalty Company, acting through E. E. Scannell, has asserted ownership over the same and has executed a deed of trust thereon in favor of Charles L. Black to Ray Bland, as trustee, and the defendant E. E. Scannell and Guy Rogers has caused said deed of trust to be foreclosed and, as aforesaid, purchased by the said Guy Rogers, as trustee aforesaid, for $250.

XIX.

This plaintiff says that, by virtue of the facts hereinabove alleged, the income from all of the properties of the said Wichita Royalty Company should be impounded under the orders of this Court to await the final result

of this action; that said various parties are producing oil and gas and which is being purchased by the defendants Humble Oil & Refining Company, Continental Oil Company, and The Texas Company and various other oil purchasing companies; that the funds should not be disbursed pending this action and that this Court should inquire into and cause an accounting to be made by the defendant E. E. Scannell, as trustee of the Wichita Royalty Company, the defendant Guy Rogers, and the other defendants hereinabove named, and that upon the final trial of this cause the plaintiff have its judgment for its debt, interest, attorney's fees, and costs of suit, for an establishment and foreclosure of its lien upon all of the properties and assets of the Wichita Royalty Company, whether transferred or not, as aforesaid, and that the various deeds and conveyances, mortgages and assignments, be vacated and held for naught and that the defendant oil companies be required to account and pay into the registry of this Court the proceeds from the purchase of oil, gas, and casinghead gas from said properties; that, in the event that it is determined that the oil and gas royalties in Wheeler County and in Gray County were not binding upon the Wichita Royalty Company and that it had a right to repudiate the said transaction, then that the plaintiff recover judgment for the title and possession of said royalties, as well as the proceeds therefrom.

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The plaintiff further prays that citation be had upon the defendants, Guy Rogers, individually and as trustee under the will of L. B. Rogers, deceased, Charles L. Black, W. H. Peckham, administrator aforesaid, Humble Oil & Refining Company, Continental Oil Company, and The Texas Company, and that they be required to answer herein at the next regular term of Court.

The plaintiff further prays for such other and further relief, general or special, in law or in equity, as it may be entitled to.

WEEKS & MORROW,
BULLINGTON, HUMPHREY & KING,
Attorneys for Plaintiff.

18 EXHIBIT "A".

The State of Texas,
County of Wichita.

Know All Men By These Presents: That Wichita Royalty Company, a trust estate, acting herein through E. E. Scannell, its sole trustee, hereunto duly authorized, of the County of Wichita and State of Texas, Party of the First Part, has mortgaged and hereby mortgages to Guy Rogers of Wichita County, Texas, Party of the Second Part, the following described real estate and premises situate in Okmulgee County, Noble County, and Kay County, all in the State of Oklahoma, to wit:

(Same property as described in foregoing petition.)

together with all the improvements thereon and appurtenances thereto belonging, and First Party warrants title to the same and every part thereof.

This mortgage is given to secure the principal sum of Twenty-five Hundred Dollars, or so much thereof as may be necessary for Second Party to advance to First Party in payment of Court costs, appeal costs, briefing costs, printing costs, and all other similar costs, and expenses incurred in appealing from time to time until final judgment is ultimately obtained, and all costs incident thereto are paid in connection with the cause of the City National Bank of Wichita Falls, Texas, against the Wichita Royalty Company, including the cross action filed by said Wichita Royalty Company in said cause, being numbered 24549B on the Docket of the 78th District Court of Wichita County, Texas. Should Second Party advance for First Party in the premises in excess of Twenty-five Hundred Dollars ($2500.00), then this mortgage shall secure such additional advancements as may be made, all of the money so advanced to become due and payable twenty days after final judgment
19 is ultimately entered in said cause and all sums so advanced by Second Party shall bear interest

from the date of their advancement at the rate of eight per cent per annum, all in accordance with the terms of the written agreement hereto attached and by reference made a part thereof.

In Witness Whereof this instrument is executed this the 25th day of February, A. D. 1932.

WICHITA ROYALTY COMPANY,
By E. E. SCANNELL,
Sole Trustee.

The State of Texas,
County of Wichita.

Before Me, Grace Jarnagan, a Notary Public in and for Wichita County, Texas, on this the 25th day of February, 1932, personally appeared E. E. Scannell, to me known to be the identical person who subscribed the name of Wichita Royalty Company and his own name to the foregoing instrument as its sole trustee and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such Wichita Royalty Company, as its sole trustee, for the uses and purposes therein set forth.

Given Under My Hand And Seal Of Office the date above set out.

GRACE JARNAGAN,
(Seal) Notary Public, Wichita County, Texas.

My Commission expires: June 1st, 1933.

20 EXHIBIT "B".

List of Royalties

In Wichita County, Texas.

1. 29/640 of the total production in Three acres more or less out of the Northwest corner of the West 5 acres,

out of the north 10 acres, out of the north 20 acres, out of the north 40 acres, Block No. 75, Red River Valley lands, Wichita County, Texas.

2. 50/520 or 6/16 or 30/832 of the total production in the East 10 acres of the south 20 acres of the northwest 40 acres, out of Block No. 88, Red River Valley lands, Wichita County, Texas.

3. 1/64 of 1/8 or 1/48 of the total production in all of Lots Nos. 13 and 14 of the orchard addition to the town of Burkburnett, Wichita County, Texas.

4. 1/64 or 1/8 or 1/512 of the total production in 640 acres more or less known as J. B. Evans Farm, Block No. 818, to wit: 200 acres of T. E. and L. Co. Survey, and 200 acres of the Elizabeth Stanley Survey, and 200 acres more or less of Jucinda Meadors survey, Wichita County, Texas.

5. 3/22 of 1/8 or 3/176 of the total production in a certain tract of land in and to Block 1, Goodwin addition townsite of Burkburnett, and by virtue of a certain pooling contract which includes lots No. 19 and the East ½ of 20, Wichita County, Texas.

6. 1/11 of 1/8 of 1/88 of the total production in Lot No. 11 Block No. 1 Goodwin Addition, Townsite of Burkburnett, subject to a certain pooling contract dated August 7, 1918, Wichita County, Texas.

7. 5/12 or 1/8 of 5/96 of the total production in Lots Nos. 5-6-7-8-9 North ½ of Block No. 22, townsite of Burkburnett, Wichita County, Texas.

21 8. ½ of 1/8 or 1/16 of the total production in Lots Nos. 11-12-13-14-17-18-19-20 of the H. E. McConnell subdivision of the East 200 acres of the E. Michna land of the F. W. Huseman and A. A. Durfee surveys, Block No. 819, Wichita County, Texas.

9. 1/12 of 7/16 or 7/192 of the total production in two acre tract of land in the Musgrave addition, townsite of Burkburnett described in deed, Wichita County, Texas.

10. 3/64 overriding royalty in 40 acres of the south 100 acres of the Sarah Tankersley survey, Abstract 278, known as Lot 4, Young County, Texas.

11. 1/10 of 3/8 or 3/80 of the total production in Lots No. 9 of the H. E. McConnell subdivision of the East 200 acres of the Michna land in F. W. Huseman survey, Block 819, Wichita County, Texas.

12. 1/10 of 3/8 or 3/80 of the total production in Lot No. 10 of the H. E. McConnell subdivision of the East 200 acres of the Michna land in F. W. Huseman survey, Block 819, Wichita County, Texas.

13. 25/520 of 3/8 or 15/832 of the total production in the East 10 acres of the south 20 acres of the northwest 40 acres out of Block 88 Red River Valley lands subdivision, Wichita County, Texas.

14. 7/256 of the total production in the West 2½ acres of the north 5 acres of that 10 acres out of the 60 acres off the north end of the south 140 acres off the East 272 acres of Block 101, Red River Valley lands, Wichita County, Texas.

15. 5/360 of 7/16 or 7/1152 of the total production in the south 5 acres of the West 2½ acres of the East ½ of the southwest ¼ of the southwest 160 acres of Block 97, Red River Valley lands, Wichita County, Texas.

16. ¼ of 1/8 or 1/112 of the total production in Lot No. 19, College Heights additions, townsite of Burkburnett, subject to pooling agreement August 19, 1918, Wichita County, Texas.

22 17. 1/24 overriding royalty of the total production in 7 acres more or less in the south central part of Block 97, Red River Valley lands, Taylor farm, F. Stanley survey, Abstract 259, Wichita County, Texas.

18. 1/6 of 1/8 or 1/48 of the total production in Lot No. 3, Block 1, of the College Heights additions to the town of Burkburnett subject to pooling agreement, Wichita County, Texas.

19. ¼ of 1/8 or 1/32 of the total production in the southeast 50 x 660 feet, known as the J. E. Musick land, outer Block 20, of the City of Burkburnett, Wichita County, Texas.

20. ½ of 1/8 or 1/16 of the total production in 8½ acres out of outer block 24 of the outer blocks of the town of Burkburnett as described in deed, Wichita County, Texas.

21. 1/7 of 1/8 or 1/56 of the total production in Lot 7, Block 2, L. and S. Second Addition to the town of Burkburnett, known as the River Sand lease, Wichita County, Texas.

In Young County, Texas.

1. 1/16 of 1/8 or 1/128 of the total production in all of the south 80 acres of the J. A. Harkness survey, Abstract 1442, Patent 112, Volume 9, known as A. L. Owens farm, Young County, Texas.

2. 1/8 of 1/8 or 1/64 of the total production in all of the south 80 acres of the J. A. Harkness survey, Abstract 1442, patent 112, Volume 9, known as A. L. Owens farm, Young County, Texas.

3. 1/8 of 1/8 or 1/64 of the total production in the West 40 acres of the south 80 acres of the G. L. Aynes-

worth survey, B. R. I. R. 49, Abstract 1948, patented to J. A. Driver, dated August 13, 1913, Patent No. 3, Vol. 47, Young County, Texas.

4. 1/8 of 1/8 or 1/64 of the total production in the East 40 acres of the south 80 acres of the G. L. Aynesworth survey BR IR No. 49, Abstract 1948 patented to J. A. Driver dated August 13, 1913, Patent No. 3, Volume 47, Young County, Texas.

23 5. 5/8 of 1/8 overriding royalty or 5/64 of total in 40 acres of the south 100 acres of the Sarah Tankersley survey, Abstract 278, known as Lot 4, Young County, Texas.

6. 1/16 of 1/8 or 1/128 of the total production in the southwest 40 acres of the C. E. F. Auburg survey, Abstract 1663, Patent 550, Volume 11, patented to C. E. F. Auburg, Young County, Texas.

7. 1/32 of 1/8 or 1/256 of the total production in all of R. D. Owens survey, Abstract 2245 known as BR IR survey 38, patented October 29, 1919, by R. D. Owen, Young County, Texas.

8. 1/16 of 1/8 or 1/128 of the total production in all of the south 80 acres of the J. A. Harkness survey, Abstract 1442, Patent 112, Vol. 9, A. L. Owen farm, Young County, Texas.

9. 1/4 of 1/8 or 1/32 of the total production in all of the R. D. Owens survey, Abstract 2245, known as BRIR survey 38, patented October 29, 1919, by R. D. Owen, Young County, Texas.

10. 1/24 of 1/8 or 1/192 of the total production in the North 100 acres of the P. J. Humphries survey, Abstract 153, J. W. Hughes farm, Young County, Texas.

11. 1/16 of 1/8 or 1/128 of the total production in the southwest 40 acres of the C. E. F. Auburg survey, Abstract 1663, patent 550, Volume 11, patented to C. E. F. Auburg, Young County, Texas.

12. 3/16 of 1/8 or 3/128 of the total production in all of Brir 39 J. E. Dowdle survey, Abstract 2215, containing 160 acres, Young County, Texas.

In Eastland County, Texas.

1. 1/48 of 1/8 or 1/384 of the total production in 84 acres more or less out of the W. A. Cannon Pre-emption survey, known as the McClure Farm, Eastland County, Texas.

2. 11/12 of 1/32 of 1/8 or 11/3072 of the total production in the West 50 acres of the south 100 acres of the W. G. Watkins survey, known as B. F. Eakin Farm, Eastland County, Texas.

24 In Limestone County, Texas.

1. 2/52 or 1/8 or 3/416 of the total production in a fifty acres tract more or less, a part of the Pedro Varela XI League Grant said Fifty acres being more particularly described as follows: Beginning at the southwest corner of Felix Dancy's tract at a stake in Thurmon's north line; thence south 45 W 473 varas with Thurmon's said line to a stake in same; thence North 45 W. 261 vrs. with Thurmon's line to stake in same; thence north 45 W. 510 vrs. to a stake for corner in Geo. Harris S. Line; thence North 45 E 365 vrs. with said Harris S. Line to his S. E. Corner; thence south 45 E 512 vrs. with King Dancy's W. Line to stake in same; thence north 60 E 311 vrs. to stake in Felix Dancy's W. Line; thence south 35 E 200 vrs. to the place of beginning, containing fifty acres more or less, less 6 vrs. off the North end reserved from road, Limestone County, Texas.

In Navarro County, Texas.

1. 1/48 of 1/8 or 1/384 of the total production in a certain tract of land out of the W. H. Smith survey, conveyed by G. T. Jester and W. R. Bright to W. H. Lee on December 10, 1882, volume 41, page 415, Deed records of Navarro County, Texas, known as J. J. McGaw Farm.

2. 1/48 of 1/8 or 1/384 of the total production in a certain tract of land out of the W. H. Smith survey, conveyed by G. T. Jester and W. R. Bright to W. H. Lee on December 10, 1882, Volume 41, page 415, Deed Records of Navarro County, Texas, known as J. J. McGaw Farm.

3. 1/48 of 1/8 or 1/384 of the total production in a certain tract of land out of the W. H. Smith survey, conveyed by G. T. Jester and W. R. Bright to W. H. Lee on December 10, 1882, volume 41, page 415, Deed Records, Navarro County, Texas.

25 4. 1/32 of 1/8 or 1/256 of the total production in the West 1/2 of 100 acre tract out of the Northeast corner of J. B. Barry survey, Abstract 92, known as the W. A. Brown Farm, Navarro County, Texas.

In Archer County, Texas.

1. 1/8 of the 1/8 Fee Royalty in the West 30 acres of the East 50 acres of the North 80 acres of Block 1598, Texas Immigration and Land Company Sr. L. M. Hayter land, North 100 acres of south 240 acres of Block 1598 W. O. Hayter land, Archer County, Texas.

2. 1/16 of the 1/8 Fee Royalty in Block 46 of the Meade L. M. Pasture subdivision of the D. G. Thomas survey, Abstract 458, Archer County, Texas.

3. 1/16 of the 1/8 Fee Royalty in Block No. 9 of the Crawford Pasture Subdivision of the Isaac Holman Survey, Archer County, Texas.

4. 1/16 of the 1/8 fee royalty in the N. 40 acres of Block 21; S 32 acres of Block 21; S 60 acres of W 80 acres of Block 22; and E 60 of W 160 of Block 19, Anderson south pasture subdivision, Archer County, Texas; N 25 acres of E 50 of W 100 of Block 19.

5. An undivided 1/8 interest in 1070 acres of land situated in Archer County, Texas, known as the Porter Ranch, being described by metes and bounds as follows: Beginning at a stone marked P. J. B. for an inside corner of the Peter J. Bailey survey; thence south 950 varas to S. E. Corner; thence North 89-25 W 951 varas a stone for southwest corner Peter J. Bailey survey, Abstract No. 30; thence West 1951 varas to stone in road, the Southwest corner of J. Pointevent survey No. 1, Abstract No. 348; thence north 0-30 W 1600 varas to the northwest corner of the J. Pointevent survey; thence East in center of road 960 varas to inside corner; thence north 457 26 varas to Northwest corner; a fence corner; thence south 89-43 East along fence 1020 varas to corner; thence North 25 varas to corner; thence East 1295 varas to corner; thence East 1295 varas to Northeast corner in West line of Effie Stanford land; thence south 1134.4 varas to the south line of Peter J. Bailey survey; thence West 345.2 varas to place of beginning, and containing 1070 acres.

In Archer and Young Counties, Texas.

1. 1/8 of the 1/8 fee royalty in E. Pankonin survey, No. 1700, and L. Pankonin Sur. No. 1701, known as E. ½ of Section 4, BBB and C RR Co. Sur., Cert. 692, Young and Archer Counties, Texas.

In Callahan County, Texas.

1. 1/4 of the 1/8 fee royalty in the E 30 acres of a 71 acre tract of land out of the D. Milligan Survey, conveyed to A. J. Mathis, by W. H. Clements and wife, H. J. Clements, on the 4th day of December, 1907, said deed being recorded in Vol. 43, page 116, Deed Records of Callahan County, Texas.

In Wilbarger County, Texas.

1. 1/4 of 1/8 overriding royalty in the south 40 acres of the north 60 acres of the West ½ of the Northeast ¼ of section 83, Block 14, H and TC RR Co. Survey, Wilbarger County, Texas.

In Wheeler County, Texas.

1. 1/32 of the 1/8 Fee Royalty in all of the West one-half of the Southeast one-fourth of Section 43 in Block 24, H and G N Ry. Co. survey in said county, containing 80 acres of land more or less, Wheeler County, Texas.

2. 1/16 of the 1/8 Fee Royalty in all of the Northeast one-fourth of Section 47, Block 24, H and G N Ry Co. Survey in Wheeler County, Texas.

27 3. 1/32 of the 1/8 fee royalty in all of the East one half of section No. 54, in Block 24, H. and G. N. Ry. Co. Surveys containing 320 acres more or less Wheeler County, Texas.

4. 1/16 of the 1/8 fee royalty in all of the East 1/2 of section 57 in Block 24, H and G N Ry. Co. Survey in Wheeler County, Texas, containing 320 acres of land more or less.

5. 1/16 of the 1/8 royalty in all of the north one half of Section 45, Block 24, H and G N Ry. Co. Surveys in Wheeler County, Texas.

In Gray County, Texas.

1. 1/4 of the 1/8 royalty in the West half of the southwest quarter and the Northeast quarter of the southeast quarter of Section 59, in Block 25, H and G N Ry. Co. Surveys containing 120 acres of land, more or less, Gray County, Texas.

2. 1/8 of the 1/8 Royalty in the Northwest quarter of section 60, Block 25, H and G N Ry. Co. Surveys containing 160 acres more or less, Gray County, Texas.

In Hartley County, Texas.

1. 1/16 of the royalty in all of Section No. 54 as the same is shown by the W. T. Twitchell map of the subdivisions of the Bravo Ranch lands located in Hartley County, Texas, containing 640 acres more or less.

In Pecos County, Texas.

1. 1/4 of the royalty in all of Section 206, Block 3, Cert. No. 1/632 issued to the Texas and Pacific Railway Company and containing 640 acres, Pecos County, Texas.

28 EXHIBIT "C".

Trustee's Deed.

The State of Texas,
County of Wheeler.

Know All Men By These Presents: That, Whereas, on the 8th day of December, 1933, Wichita Royalty Company,

acting through its Trustee hereunto duly authorized executed and delivered to Ray Bland all of its property in trust to secure Charles L. Black in the payment of certain indebtedness set out in such deed of trust which is of record in Book 25 at page 75 of the Deed of Trust Records of Young County, Texas; in Vol. 20, page 107 of the Deed of Trust Records of Archer County, Texas; in Vol. 18, page 461 of the Deed of Trust Records of Wheeler County, Texas; and in Vol. 24, page 349 of the Deed of Trust Records of Gray County, Texas, which deed of trust provided that upon the maturity of a portion of the debt herein described, the trustee therein was authorized to sell all or any portion of the property thereby covered without exhausting the power of future sales; and

Whereas, default has been made in the payment of a portion of said debt which was past due and unpaid, and the said Charles L. Black, the holder of said indebtedness, has since such default requested the said trustee to sell a portion of the property covered by such deed of trust, such sale to be held without prejudice to the right and power thereafter to offer for sale and to sell such other and further properties of said mortgagor necessary to satisfy the mortgagor's indebtedness to his beneficiaries therein for present or future indebtedness, such portion of the property covered by such deed of trust being described as follows, to-wit:

All and singular the property of the said Wichita Royalty Company situated in the Counties of Archer, Young, Gray and Wheeler, Texas, whether such property be personal or real and whatsoever its description, including the land, interest in land, leases, royalties, mineral estates, leasehold interests, oil and gas rights, minerals, monies due from the sale of minerals, accounts receivable, choses in action, bonuses, rentals and monies due or to become due in lieu of royalty; and

29

Whereas, pursuant to such request, and to the provisions of said deed of trust, I proceeded to sell said property at public auction at the Court house door of Archer County, Texas, between the hours of ten o'clock A. M. and four o'clock P. M. on Tuesday, the 7th day of August, A. D. 1934, after having given public notice of the time, place and terms of such sale, as prescribed by the terms of said deed of trust and after first posting written notice thereof for three consecutive weeks prior to the date of sale in three public places in Archer County, Texas, Gray County, Texas, Wheeler County, Texas, and Young County, Texas, such posting being three in number in each of said counties, one of such notices being posted at the Court house door in each county and no two of the notices in each county having been posted within the same town; and

Whereas, at such sale said property was by me struck off to Guy Rogers, Trustee under the will of L. B. Rogers, deceased, for the price and sum of $250.00 he being the best and highest bidder for the same and said sum being the best and highest bid therefor:

Therefore, Know All Men By These Presents: That I, Ray Bland, of Wichita County, Texas, Trustee as aforesaid, by virtue of the powers granted to me by said deed of trust and in consideration of the premises and of the sum of $250.00 to me cash in hand paid by the said Guy Rogers as Trustee under the will of
30 L. B. Rogers, deceased, the receipt whereof is hereby acknowledged (which said sum of money I have applied according to the directions of said deed of trust), have Granted, Sold, and Conveyed, and by these presents do Grant, Sell and Convey unto the said Guy Rogers, Trustee under the will of L. B. Rogers, deceased, of the County of Wichita and State of Texas, the property hereinabove particularly described, being all and singular the property of Wichita Royalty Company situated in the Counties of Archer, Young, Gray and Wheeler, Texas.

To Have And To Hold the same property, together with all and singular, the rights and appurtenances thereto in anywise belonging unto the said Guy Rogers as Trustee under the will of L. B. Rogers, deceased, his heirs and assigns forever. And for and on behalf of the Wichita Royalty Company, the grantor in such deed of trust, and its successors, I do hereby bind the said Wichita Royalty Company and its successors to warrant and forever defend all and singular said premises in so far as is authorized by such deed of trust, unto the said Guy Rogers, Trustee under the will of L. B. Rogers, deceased, his heirs and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof.

Witness My Hand, this the 7th day of August, A. D. 1934.

RAY BLAND,
Trustee.

The State of Texas,
County of Wichita.

Before me, the undersigned authority, on this day personally appeared Ray Bland, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as Trustee, for the purposes and consideration therein expressed and in the capacity therein set forth.

Given under my hand and seal of office, this 9th day of August, A. D. 1934.

FERN KOLB,
31 Notary Public, Wichita County, Texas.

The State of Texas,
County of Gray.

I, Hereby Certify that the foregoing instrument of writing, with its certificate of authentication, was filed

for record in my office on the 28th day of August, A. D. 1934, at 1:10 o'clock P. M. and was duly recorded by me on the 30th day of August, A. D. 1934 in Vol. 63, page 469, of the Records of Gray County, Texas.

Witness my hand and the seal of the County Court of said County at office in Pampa, Texas, the day and year last above written.

CHARLIE THUT,
Co. Clerk County Clerk, Gray County, Texas.
(Seal) By KATHALINE HOWELL,
Deputy.

The State of Texas,
County of Young.

I, Pearl Matthews, Clerk of the County Court in and for said County, do hereby certify that the foregoing instrument, dated the 7th day of August, 1934, with its Certificate of Authentication, was filed for Record in my office, the 21st day of August, 1934, at 8:00 o'clock A. M. and duly recorded the 22nd day of August, 1934, at 11:40 o'clock A. M. in Deed Record in said County, in Vol. 155, pages 615.

Witness my hand and seal of County Court of said County, at office in Graham, Texas, the day and year last above written.

PEARL MATTHEWS,
Clerk County Court, Young County, Texas.
(Seal) By FRANCES BELL,
Deputy.

Filed for Record: Sept. 8, 1934, at 10 A. M. Recorded: Sept. 8, 1934.

By WANDA TAYLOR,
Deputy.
32 C. J. MEEK,
County Clerk.

The State of Texas,
County of Wheeler.

I, C. J. Meek, County Clerk of Wheeler County, Texas, do hereby certify that the above and foregoing instrument is a true and correct copy of a trustee's deed executed by Ray Bland, Trustee to Guy Rogers, Trustee. Same being recorded in Wheeler County, Deed Records, Vol. 84, page 158.

Given under my hand and seal of office, this 10th day of October, A. D. 1934.

(Seal) C. J. MEEK,
County Clerk. Wheeler County, Texas.

Indorsed: City Natl. Bank of W. F. Tex. vs. Wichita Royalty Co. Plaintiff's 2nd. Am. Orig. Pet. Filed May 11, 1936 By Edna Berner Deputy Dist. Clerk, Wichita County, Texas.

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WICHITA ROYALTY COMPANY'S THIRD AMENDED ORIGINAL ANSWER, CROSS-ACTION AND INTER-PLEADER.

33 Filed June 18, 1936.

(Title Omitted.)

To the Honorable Judge of said Court:

Subject to and without waiving pleas and dilatory matters heretofore filed and pleading in due order, come now Wichita Royalty Company, a joint stock association operating under a declaration of trust filed in Wichita County, Texas, and E. E. Scannell, Trustee and one of the some thirteen hundred (1300) stockholders of Wichita Royalty Company, who joins herein for himself and all other stockholders of said company, hereinafter called

cross complainants, and with leave of the Court first had and obtained, file this their third amended original answer, cross action and interpleader in lieu and in amendment of the original pleading filed December 5, 1930, as amended by pleading filed February 14, 1931, as amended by pleading filed September 14, 1934, so that the same shall read as follows:

1.

Come now Wichita Royalty Company, a joint stock association operating under a declaration of trust filed in Wichita County, Texas, and E. E. Scannell, its Trustee and one of said some thirteen hundred (1300) stockholders of Wichita Royalty Company, who joins herein for himself and all other stockholders of said company, hereinafter called cross complainants, in answer to plaintiff's second amended original petition, as well as in cross action against the plaintiff, The City National Bank of Wichita Falls, Texas, and its successor, The City National Bank in Wichita Falls, Texas, both National Banking Corporations with principal place of business in Wichita County, Texas, and by way of interpleader against J. T. Harrell, individually and as Trustee for The City National Bank of Wichita Falls, Texas; W. H. Peckham,
34 as administrator of the Estate of G. W. Peckham, deceased; William Peckham and George Peckham, minor sons of G. W. Peckham, deceased; Robert W. Peckham; Mrs. Hazel D. Peckham, surviving wife of G. W. Peckham, deceased; and Texas Investment Company, a private corporation with principal place of business in Wichita County, Texas, where its officers and agents reside; E. A. Deaton, liquidating agent of The City National Bank of Wichita Falls, Texas, a resident citizen of Wichita County, Texas; L. H. Cullum, J. T. Harrell, Leslie Humphrey, Jack Jeffus, Oral Jones, Frank Kell, Joe Kell, J. J. Perkins, C. W. Snider and F. P. Timberlake, each a resident citizen of Wichita County, Texas, and each a stockholder in and director of The City National Bank

of Wichita Falls, Texas, and for answer, cross action and interpleader cross complainants say:

2.

That J. T. Harrell and W. H. Peckham reside in Wichita County, Texas; Mrs. Hazel D. Peckham, William Peckham and George Peckham reside at 817 North Cascade, Colorado Springs, Colorado; and that Robert W. Peckham resides at 2103 Schiller, Little Rock, Arkansas.

3.

Reference to "The Bank" herein shall mean the plaintiff Bank, The City National Bank of Wichita Falls, Texas, which also shall be referred to at times as the
35 old bank. The City National Bank in Wichita Falls, Texas shall be referred to herein as the new bank.

4.

Except as herein specifically admitted cross-complainants deny all and singular each and every averment of fact in plaintiff's said amended petition contained, demand strict proof thereof, and with respect thereto put themselves upon the country and ask thereon a determination thereof by a jury.

5.

Pleading non est factum to the instrument declared upon by plaintiff, cross complainants say that neither of said obligations herein sued on by plaintiff was executed by or with authority from Wichita Royalty Company, nor for its primary use and benefit; that Wichita Royalty Company is neither the maker nor indorser nor otherwise a party to nor bound by any instrument and/or obligation

sued on; that if in fact anyone signed the Wichita Royalty Company's name to any of the instruments sued on, the same was wholly inoperative against the association as no one had authority to bind the company thereby for the purposes, under the circumstances and upon the facts existing at the time; that as will hereinafter more fully appear, Wichita Royalty Company has received no consideration for the execution of any of the instruments sued on by plaintiff; that the same were executed solely and only for the personal benefit of and inured but to the advantage of G. W. Peckham, the bank and the officers of the bank negotiating for the original execution and subsequent renewals of the obligations declared upon by plaintiff; that monies originally advanced by the plaintiff upon notes originally executed in the name of the royalty company so that the borrowing trustee might obtain personal funds therefrom, have all been repaid to and received by the plaintiff as a matter of law, as well as of fact; and that the plaintiff and the impleaded defendants are indebted to Wichita Royalty Company in the amounts, from the times and upon the fact hereinafter shown.

36

6.

That at all times the plaintiff bank, its officers, agents and employees, knew each and every fact herein elsewhere pleaded, and were charged by law with knowledge thereof upon and under such facts so averred.

7.

The declaration of trust creating Wichita Royalty Company and which in and of itself was and is the charter of the Trustee's power, gives to the trustee thereunder general authority but to carry out the purposes of the trust, shown by the articles of agreement to be solely and only the purchase and sale of oil and gas royalties and

other oil and gas properties. It is therein provided that the title to all property acquired or to be acquired from time to time by the trust and all investments thereof should be made and held in the name of the Trustee as such, and that the Trustee shall hold all of the funds and property of the trust as Trustee with the powers and subject to the limitations declared in the declaration, shown to limit the powers of the Trustee to dealing in oil and gas business.

37 8.

G. W. Peckham was such Trustee from 1923 until his death in 1929. He was extensively engaged in private business aside from that of Trustee. Doing business with the plaintiff bank during this period, he carried his personal account in his own name therein and the trust account in the name of Wichita Royalty Company. Upon Peckham's death, E. E. Scannell became and now is substitute Trustee, succeeding after Peckham's death to the powers and duties theretofore vested in the said G. W. Peckham. From the time G. W. Peckham succeeded R. R. Robertson as Trustee of Wichita Royalty Company until October 8, 1925 said Trustee used trust funds for non-trust purposes for his personal benefit and individual profit, commingling trust funds with his own, sought to destroy evidence of Trust's title to property, colluded with the Bank and other parties hereto, made payments to such parties upon his private debts with Trust funds known to the payee to be a payment of private debts out of Trust funds, traded and trafficked with himself as an individual and himself as Trustee, and in such dual dealings profited personally therefrom with participation therein by the Bank and J. T. Harrell with notice of Trustee's breaches of trust, received and charged a salary more than $30,000.00 (Thirty Thousand Dollars) subsequent to his forfeiting his right to receive compensation, and in other ways was unfaithful to his trust, with the Bank and Harrell knowingly participating therein and through the facilities of the bank, and with the active

participation in breaches of trust by the officers and agents of the Bank the Trust was despoiled at times and to the extent which will hereafter be specifically pleaded by amendment later to be filed, but here now cross complainants allege an indebtedness due the Wichita Royalty Company by the Estate of G. W. Peckham, J. T. Harrell and the Bank in an amount in excess of $100,000.00 (One Hundred Thousand Dollars), the nature and amount of which being well known to the other parties hereto but unknown to cross complainants, but in an account to be stated the amount will be determined and later alleged as specifically as may be, all of which indebtedness arose subsequent to the active participation by the active officers of the Bank in known breaches of the Trust
38 by the fiduciary, and no prior demand for the restoration of such funds has ever been made heretofore; but demand is now made that all other parties render a true and accurate account of all Trust monies received, of the use to which the same was put, the amount thereof, through what facilities the result was accomplished, and all matters relevant to an accurate statement of the Trustee's execution of his trust.

9.

Thereafter and during the period beginning October 8, 1925 and ending November 12, 1929, G. W. Peckham drew forty-nine (49) checks on the funds deposited in the plaintiff bank to the credit of Wichita Royalty Company, aggregating the sum of $134,712.14, the checks being signed by him as Trustee for Wichita Royalty Company, and after his death seven (7) additional checks were drawn on the same account by Scannell as Trustee, aggregating $10,055.42. Forty five (45) of the checks drawn by Peckham aggregated $119,473.98 and were made payable to the order of the plaintiff bank upon which they were drawn. and four checks totaling $9,238.16 were in favor of G. W. Peckham personally. The Trustee was given personal credit on the books of the plaintiff bank for these forty-nine (49) checks which were paid out upon his

personal order upon his private checks for personal purposes, some to pay the plaintiff on personal obligations due by Peckham as an individual, and some to pay Peckham's various and sundry personal debts.

10.

All checks were upon voucher form. One check is here now reproduced as an example of all. That which is underscored was written into the printed form of the check:

Remittance Advice:

Attached hereto is our check in full settlement of the items listed below. If not correct please return with explanation.

Wichita Royalty Company.

| Description | Detail | Total |
|---|---|---|
| *Notes Payable:* | | |
| *To apply on note held by City National Bank* | | *$1,500.00* |

Detach here before depositing check.

(Perforation)

Wichita Royalty Company
Wichita Falls, Texas.

*August 16, 1927* *No. 635.*

When Properly Indorsed Pay to the order of *City National Bank $1,500.00 Exactly One Thousand Five Hundred Dollars No Cents.*

WICHITA ROYALTY COMPANY,
By *G. W. PECKHAM,*
Trustee.

To The City National Bank, Wichita Falls, Texas.

On the back of checks as and when presented and above the place of usual indorsement were printed these words:

"Indorsement hereon by the payee constitutes acknowledgment of full payment of the items listed on accompanying remittance statement. No other receipt required."

11.

These checks were deposited by the bank to the personal account of the drawing trustee and a corresponding charge made against the trust deposit, the bank well knowing that the fund was a trust fund and was being improperly diverted from the trust account to the personal account of the trustee of such fund by being deposited to the credit of an account which the bank knew G. W. Peckham was using solely for personal purposes.

12.

There now follows a list of checks drawn upon the trust deposit with the plaintiff bank, wherein is given the check number, the date, the amount, the payee, to whom credit was given, and voucher notation, each item being charged to have been an accomplished misappropriation of trust funds by the trustee through the facilities and upon the active participation of plaintiff bank, to-wit:

| Check No. | Date | Amount | Payee | Credit Given | Voucher Notation |
|---|---|---|---|---|---|
| 427 | 10- 8-25 | $ 5,500.00 | Bank | Peckham | Purchase royalties |
| 451 | 12-28-25 | 1,250.00 | Bank | Peckham | Producing royalties |
| 452 | 1- 4-25 | 5,000.00 | Peckham | Peckham | Producing royalties |
| 458 | 1-11-26 | 5,000.00 | Bank | Peckham | Producing royalties |
| 461 | 1-18-26 | 15,769.07 | Bank | Peckham | Stephens Royalty |
| 478 | 3- 6-26 | 17,623.70 | Bank | Peckham | Marlborough Purchase |
| 479 | 2- 6-26 | 6,000.00 | Security | Peckham | Marlborough Purchase |
| 485 | 3-31-26 | 7,500.00 | Bank | Peckham | Marlborough Imp'mnt. |
| 495 | 3-23-26 | 300.00 | Bank | Note | Interest to Bank |
| 503 | 5-20-26 | 3,000.00 | Peckham | Peckham | Marlborough Imp'mnt. |
| 506 | 5-29-26 | 500.00 | Bank | Note | Interest to Bank |
| 507 | 5-29-26 | 1,500.00 | Bank | Peckham | Marlborough Imp'mnt. |
| 510 | 6-16-26 | 4,500.00 | Bank | Peckham | Marlborough Imp'mnt. |
| 519 | 7-13-26 | 1,000.00 | Bank | Peckham | Marlborough Imp'mnt. |
| 521 | 7-16-26 | 300.00 | Bank | Note | Interest to Bank |
| 525 | 8- 2-26 | 4,000.00 | Bank | Peckham | Highland Ir. Co. Note |
| 531 | 8-27-26 | 500.00 | Bank | Note | Interest to Bank |
| 532 | 8-27-26 | 4,357.58 | Bank | Peckham | Highland Ir. Co. Note |
| 540 | 10-13-26 | 300.00 | Bank | Note | Interest to Bank |
| 541 | 10-13-26 | 10,000.00 | Bank | Peckham | Royalties Wheeler and Gray Counties |

| Check No. | Date | Amount | Payee | Credit Given | Voucher Notation |
|---|---|---|---|---|---|
| 550 | 11-20-26 | 7,500.00 | Bank | Peckham | Purchase royalties |
| 554 | 12- 2-26 | 1,500.00 | Bank | Peckham | Royalties and fee |
| 556 | 12-26-26 | 700.00 | Peckham | Highland | Highland Ir. Co. Note |
| 556-A | 12-22-26 | 538.13 | Peckham | Highland | Highland Ir. Co. Note |
| 557 | 12- 7-26 | 1,920.00 | Bank | Draft | Purchase royalties |
| 569 | 1-11-27 | 300.00 | Bank | Note | Interest to Bank |
| 571 | 1-19-27 | 2,000.00 | Bank | Peckham | Marlborough Imp'mnt. |
| 579 | 2-19-27 | 2,500.00 | Bank | Peckham | Marlborough Imp'mnt. |
| 582 | 3- 1-27 | 500.00 | Bank | Peckham | Interest to Bank |
| 583 | 3- 1-27 | 301.82 | Bank | Peckham | Purchase royalties |
| 584 | 3- 1-27 | 500.00 | Bank | Note | Interest to Bank |
| 591 | 3-23-27 | 2,000.00 | Bank | Peckham | Purchase royalties |
| 599 | 4-14-27 | 300.00 | Bank | Note | Interest to Bank |
| 615 | 6- 8-27 | 500.00 | Bank | Note | Interest to Bank |
| 620 | 6-18-27 | 1,200.00 | Bank | Peckham | Note to Bank |
| 628 | 7-16-27 | 1,500.00 | Bank | Note | Interest to Bank |
| 635 | 8-16-27 | 1,500.00 | Bank | Peckham | Note to Bank |
| 650 | 10-14-27 | 2,400.00 | Bank | Peckham | Note to Bank |
| 657 | 11-25-27 | 1,800.00 | Bank | Peckham | Interest to Bank |
| 682 | 1-18-28 | 2,000.00 | Bank | Note | Note to Bank |
| 710 | 4-20-28 | 1,850.00 | Bank | Peckham | Note to Bank |

| | | | | | |
|---|---|---|---|---|---|
| 717 | 5-17-28 | 220.00 | Bank | Note | Interest to Bank |
| 721 | 6- 1-28 | 424.66 | Bank | Note | Interest to Bank |
| 733 | 7-23-28 | 220.00 | Bank | Note | Interest to Bank |
| 752 | 9-27-28 | 424.66 | Bank | Note | Interest to Bank |
| 768 | 12- 4-28 | 2,000.00 | Bank | Note | Note to Bank |
| 791 | 2-19-29 | 1,500.00 | Bank | Note | Note to Bank |
| 814 | 6- 7-29 | 1,500.00 | Bank | Note | Note to Bank |
| 824 | 7-15-29 | 212.49 | Bank | Note | Interest to Bank |
| 836 | 8-30-29 | 1,000.00 | Bank | Note | Note to Bank |
| 856 | 11-23-29 | 1,500.00 | Bank | Note | Note to Bank |
| 880 | 1-24-30 | 1,500.00 | Marlborough | Tex. Inv. Co. | Loan |
| 890 | 2-24-30 | 1,000.00 | Bank | Note | Note to Bank |
| 898 | 4-10-30 | 1,000.00 | Bank | Note | Note to Bank |
| 908 | 5-13 30 | 500.00 | Tex. Inv. Co. | Tex. Inv. Co. | Marlborough Note |
| 920 | 6-14-30 | 1,500.00 | Bank | Note | Note to Bank |
| 930 | 7-14-30 | 3,055.42 | Bank | Note | Note to Bank |
| Total | | $144,767.56 | | | |

41

13.

Additional to the above, and as a further misappropriation, the Trustee Peckham sold two properties belonging to the trust and received therefor the aggregate of $12,048.00, $6,000.00 thereof being evidenced by cashier's check and deposited to the personal account in the plaintiff bank, of G. W. Peckham and by him used for his own personal benefit. The remaining $6,048.00 was paid by the purchaser of the trust property under escrow contract between Wichita Royalty Company and the purchaser, deposited in the plaintiff bank as escrow agent, with executed conveyance to be surrendered to the purchaser upon the payment of $6,000.00 and interest, as evidenced in writing deposited with the plaintiff bank. The purchaser paid into the escrow the total of $6,048.00 by checks payable to the plaintiff bank, which the bank, well knowing the money to be trust money, deposited to the personal account of G. W. Peckham and which was by him misappropriated.

14.

During the period of time covered by the transactions above, the bank received from G. W. Peckham upon his personal indebtedness to it $57,764.21, said payments being made to the bank from the personal account of G. W. Peckham with the bank to which the above funds had been credited, and but for the credit of which trust funds such payments could not all have been made, and at the very outset of the series of misappropriations, the defaulting trustee diverted trust funds from Wichita Royalty Company's account to his individual account so that he could, as he did, pay therefrom the bank upon his individual debt.

15.

The perforation on each check and the notation on the back thereof advised the bank that the check as and when

presented was a voucher check and that attached thereto when issued was a voucher upon which was written the purpose thereof, and the bank was thus referred to matters of writing wherefrom it affirmatively appeared that each of the several checks now declared upon
42 was issued for other than a trust purpose, but a purpose personal to the Trustee and involved in a transaction wherein the trustee was personally interested, and in the consummation of which there was a breach of trust facilitated through the bank's charging the trust deposit and crediting the trustee's personal account.

16.

Each of the charges against the trust deposits and credits to the personal account of the drawing Trustee was made at a time when the personal account of the Trustee had been all but exhausted and he was indebted in large amounts to the plaintiff bank.

17.

The impleaded defendant, J. T. Harrell, was, during the period of these several transactions, the active officer of the plaintiff bank who negotiated with G. W. Peckham certain loans hereinafter described; a substantially large part of his loans were first deposited to the trust account and therefrom diverted to the personal account of the drawing Trustee so that such Trustee as an individual might, as he did, pay to the loaning banker upon Peckham's personal debt, and so that the loaning banker might, as he did, pay therewith the bank upon his private debt, and so that the bank might, as it did, receive therefrom a portion of the proceeds of such loan upon the private debt of W. H. Peckham, and upon the debt of G. W. Peckham.

The $22,000.00 note sued on by the bank was but in renewal of a $15,000.00 note dated January 18, 1926 and a $25,000.00 note dated March 1, 1926. The 1926 loans were negotiated by G. W. Peckham through J. T. Harrell for the bank:

(a) On January 18, 1926, J. T. Harrell credited the trust deposit with $15,000.00 and charged the trust liability ledger therewith, Peckham executing Wichita Royalty Company's note therefor. That date Peckham personally owed the bank $28,050.00 plus accrued interest. Peckham and Harrell were jointly and severally liable to Highland Irrigation Company for $51,895.00 plus
43 interest as the unpaid purchase price of Marlborough Addition, their liability inter se being one-fourth each. Theretofore, Peckham had caused to be issued trust checks Nos. 452 and 458, dated January 4th and January 11, 1926, respectively, totaling $10,000.00, causing the voucher records to show the purchase of royalty and receiving personal credit therefor at the bank. On January 18, 1926, the date of the loan, Peckham issued trust check No. 461 for $15,769.07, made payable to the bank, receiving personal credit therefor the same day the bank charged the trust with the $15,000.00 loan. The notation on voucher No. 461 showed the $15,769.07 check to be the balance of the $25,769.07 purchase of one-fourth royalty under Stephens 40 acres and referred to as checks Nos. 452 and 458 for $5,000.00, previously paid. The Stephens royalty was owned by J. T. Harrell and C. E. Basham, both active officers of the plaintiff bank. One-half of this royalty was sold to G. W. Peckham by deed dated November 9, 1925 and filed for record November 16, 1925. Later on, and as a separate transaction, the other one-half of the Stephens royalty was sold by Harrell and Basham for an agreed consideration of $22,407.00, the deed being dated January 1, 1926, acknowledged and delivered January 28, 1926 and filed for record February 4,

1926. Seven days after the $15,000.00 loan and the diverting of $15,769.07 to the personal account of G. W. Peckham and before another deposit was made to Peckham's personal account, Peckham issued his personal check on his private account for $10,028.00, payable to J. T. Harrell and C. E. Basham in part payment for the Stephens royalty sale. But for the transfer of this $15,769.07, Peckham's personal balance would have been but $1,084.04 when the bank paid Harrell and Basham the $10,028.00, in payment of his private debt. The difference between the $25,769.07 transferred from the trust account to the personal account of the Trustee and shown by trust books to be in payment of Stephens royalty, and the $22,407.00 sale price by Harrell and Basham makes the Trustee's personal profit $3,362.07.

44 This 15,000.00 loan was made by Harrell personally. He personally made the royalty sale. It is the custom of banks and bankers, and was at that time, that when a loan of this size is made, the purpose of the loan is always inquired into, the purpose of this loan being to obtain for Peckham personally funds with which to pay the loaning banker, Harrell, and his co-partner, C. E. Basham, an active officer of the bank. Although at the time, the trust had lots of property and owed no debts, still the loan being intended for the personal benefit of G. W. Peckham, J. T. Harrell required that G. W. Peckham indorse the note personally. The trust now charges that this $15,000.00 loan so made between Harrell and Peckham was for the purpose of G. W. Peckham's being able, at a time when his personal credit was exhausted, to use trust credit so that he might obtain money to divert to his personal account and therefrom pay in part a private debt to the loaning banker, a part to pay the bank itself a private debt, the balance to be paid to Peckham's personal creditors, and all of the facts and circumstances to be kept and concealed from the stockholders. Trust checks in excess of the deposited loan were subsequently honored by the bank to which they were payable in sufficient amounts to discharge this

credit. Furthermore, of the $10,028.00 transferred from the Trust account to Peckham's personal account as a part of the proceeds of the loan, $5,014.00 of said proceeds of said loan was deposited to the personal account of J. T. Harrell in the bank on January 25, 1926 at a time when J. T. Harrell's deposit balance was but $219.16, and on the same day J. T. Harrell, by check drawn upon his said account with the bank, paid to the bank upon his personal debt $5,006.67. Thus was accomplished circuitously a misappropriation through the facilities of the bank in a transaction wherein the Trustee was personally interested and which had for its primary object the accomplished purpose to pay the bank and Harrell with the proceeds of the loan items of indebtedness due by others than the Trustee, resulting in J. T. Harrell's effecting a large sale of his personal property, collecting a private debt from G. W. Peckham of $10,028.00 for himself and C. E. Basham and in turn paying the bank therefrom $5,-006.67.

45 (b) On March 1, 1926, the impleaded defendant, Harrell, for the bank, credited the trust deposit with $25,000.00 and charged the trust on its liability ledger therewith, receiving the trust note therefor executed by G. W. Peckham. That day Peckham personally owed the bank $28,050.00 plus interest. His deposit balance was $341.90. He and Harrell were jointly liable to Highland Irrigation Company for $51,895.00 plus interest as the unpaid purchase price of Marlborough Addition bought September 25, 1925 and platted as an Addition December 4, 1925. Sales of lots were active on a start, but economic conditions changed and sales slowed up. It was then necessary to spend large sums of money for the improvement of Marlborough Addition. Thus on March 1, 1926, Peckham negotiated a loan with Harrell, both being partners in Marlborough Addition, and good friends. Harrell issued the bank's deposit slip for $25,000.00, thus crediting the trust account and charging its liability ledger. That same day Peckham issued his

personal check for $11,811.85 to his brother, who was another partner in Marlborough Addition, the payment being for an additional one-fourth interest in Marlborough Addition, making Peckham's personal interest in such Addition one-half thereof. Peckham's personal balance of $341.90 the morning of March 1, 1926 was insufficient to clear the $11,811.85 check drawn thereon payable to Peckham's brother. The deposit balance of the trust that morning was $11,657.94, which during the day was increased to $35,657.94 by the $25,000.00 credited loan. Before another deposit and on March 6, 1926, Peckham issued trust checks Nos. 478 and 479, the first for $17,625.70 drawn on and payable to the plaintiff bank, presented same to the bank and received personal credit therefor; the other for $6,000.00 payable to Security National Bank, where Peckham received personal credit. The day of this simulated transfer of trust funds to the extent of
$17,623.70 from the trust account to the personal
46 account of the drawing trustee and before another deposit therein and but the fifth day after Harrell's $25,000.00 loan to Peckham, G. W. Peckham issued his personal check for $5,060.00, payable to J. T. Harrell and C. E. Basham, which was paid the same day and credit was given by the bank therefor, one-half to Harrell and one-half to Basham. But for this $17,623.70 transfer of the proceeds of the $25,000.00 loan, the personal account of G. W. Peckham would have been $125.20, when in fact Harrell cashed the $5,060.00 personal check of G. W. Peckham in payment of a private debt. On the 9th day of March Peckham's brother cashed his $11,811.85 check, and the same day and from said funds W. H. Peckham paid the bank his personal debt. The check No. 478, on its face, when presented and cleared referred to a voucher which showed the purpose of its issuance to be the purchase of G. W. Peckham's one-half interest in Marlborough Addition for a set up consideration of $49,566.20, represented by $23,623.70 cash paid by checks Nos. 478 and 479, and subject to $23,215.50 due Highland Irrigation Company. Peckham had paid in cash at the time

of his original purchase of a one-fourth interest, $4,723.75. After March 6, 1926, Peckham personally received trust funds totaling $31,596.74 entered upon the books as improvements to Marlborough Addition, and personally expended thereon but $27,000.00, a further difference of $4,596.74 in his favor, or a total profit of $7,088.10 to Peckham's brother personally, and $11,684.84 to Peckham personally, in a transaction where Peckham assumed the dual role of dealing as an individual with himself as Trustee, at a profit to himself personally, without notice to or knowledge by the stockholders from whom all transactions were carefully and methodically concealed, and the checks being payable to the bank was but a part of the fraudulent plan to conceal. J. T. Harrell made the $25,000.00 loan. He was still Peckham's partner in the Marlborough Addition and his personal friend. He was a banker with long experience and it was customary for banks and bankers to inquire the purpose of a loan of that size, which loan was made for the purpose of in-
47 uring to the benefit of the Trustee himself, the loaning banker, the bank and the personal creditors of the drawing Trustee. Peckham was personally required to indorse the note. This original loan was made with Harrell so that Peckham with an exhausted personal credit might use trust credit so that he might divert monies from the trust deposit to his personal account in profit to himself, the bank and the loaning banker might profit in the transaction where he was both purchaser and seller, and assuming a dual position in breach of trust, all known to but condoned by the bank, its agents, servants and employees, whereby and wherefrom the bank received payment upon the personal debts of G. W. Peckham and W. H. Peckham, and Harrell was paid upon the personal debt of G W. Peckham, the bank actively participating therein and profiting the. ,y.

19.

Subsequent to the execution of the above 1926 notes, and in addition to admitted credits thereon from trust

funds, there was paid thereon items totaling $11,250.00, with which such notes were not credited and which aggregate sum was not given the effect of payment upon any renewal so that the last renewal of said 1926 transactions, in any view, were without consideration to the extent of said several payments. This $11,250.00 is represented by checks totaling such amount, of which the check reproduced above is one, all being drawn on and payable to the bank's order, and when presented referred by writing thereon to an accompanying remittance advance showing each check to have been issued to apply upon the trust's note payable to the bank. The proceeds of these checks, instead of being applied to said indebtedness to the bank, were credited to Peckham's personal account and withdrawn therefrom upon his private check to pay his individual debts and by him misappropriated. During Peckham's life he caused Trust books to show its bank liability to have been reduced by such amounts though himself renewing the bank's note from time to time without either of such credits. Upon Peckham's
48 death, the substitute Trustee as a part of a plan to cover up Peckham's fraud, and further to conceal from the stockholders the true facts, changed Trust books to conform to the bank's book and renewed the note without such credit. Peckham in his lifetime paid from his personal account $6,821.22 upon the Trust's note, yet such was but payments upon his own liability to the bank; but should it be determined that such notes were the obligation of the Trust, the Trust has elected, and now elects to credit such items, first, upon the misappropriation evidenced by the $6,000.00 check drawn on the plaintiff bank payable to the order of the Security National Bank, deposited to Peckham's personal credit with the Security National Bank, and therefrom misappropriated by the Trustee, and, second, upon the $6,000.00 cashier's check misappropriation.

20.

Through a joint participation of the bank and the Trustee $53,740.89 was misappropriated upon checks for the most part payable to the bank's order and drawn on the Trust deposit account with the bank, and by the bank charged against the Trust deposit and credited to the personal account of the drawing Trustee and therefrom disbursed upon the personal check of G. W. Peckham, some to pay the bank his private debt, some to pay bank officers an individual obligation and all for purposes other than the Trust. To simulate and ad a part and plan of his system to defraud and conceal, the Trustee caused such checks for the most part to be made to the bank's order and caused Trust checks to reflect the purpose of said checks totaling said aggregate amount to be for the purpose by the Trust of certain mineral interests but the stockholders were not advised, nor did the checks of the Trust show, that Peckham had a personal interest in any of such transactions.

21.

During his Trusteeship, Peckham was extensively engaged in the purchase and sale of oil properties as an individual and in his own right. He would generally buy properties near development, in the vicinity of a
49 drilling well and at a time and under circumstances when the value of properties in the locality was of a highly speculative and fluctuating value. These properties he would buy with his own money and take title thereto in his own name, and during the period of the fluctuating value and at a time when it appeared that the interest so bought was of little or no value, sometimes when the property had been condemned, he would thereupon execute an instrument of conveyance from himself as an individual to his Trust at a consideration fixed by himself, sometimes for the exact amount of money that he paid for the interest, and sometimes at a

price whereby he would personally profit, but at no time did he have the prior consent or subsequent approval of those whose monies and properties he held in trust, and for whom he was a trusted fiduciary.

22.

Thus the Trust books were caused to reflect the purchase of properties for the aggregate amount of $53,740.89, but such Trust books did not show that these properties had been bought by Peckham as Trustee from himself as an individual. Of the properties so reflected by Trust books as having been purchased by the Trust and conveyed by Peckham to the Trust, he only owned properties representing $45,740.89, while Trust books and vouchers described other properties of a value of $8,000.00, which were never owned by Peckham, and which the Trust never received. In other words, Peckham himself as an individual owned properties which he sold and conveyed to the Trust for a set-up book value of $45,740.89 which he himself received, while he also set-up on the books as properties acquired by the Trust $8,000.00 paid to him as an individual for properties which Peckham did not own, and which the Trust did not receive; all of the properties (except Stephens Royalty) were practically valueless during Peckham's lifetime, none of them having produced a drop of oil.

50 Peckham was never unfair to himself when acting in the dual capacity of buyer and seller. His every sale as an individual and purchase as a Trustee was without the prior consent or subsequent knowledge of those for whom he was acting in a fiduciary capacity, all of the facts being concealed during Peckham's life and by the substitute Trustee until immediately before filing the suit.

23.

With respect to all of such properties so conveyed, or supposed to have been conveyed by G. W. Peckham as an

individual to his Trust, cross complainants have elected to repudiate as nullities and with respect to same make such tenders and offers due equity as in good conscience required, such transactions being in connection with checks listed above and numbered 427, 451, 452, 459, 461, 550, 583 and 591, and concerning the following properties:

(a) The East 30 acres of a 71 acre tract of the Mulligan Survey, Callahan County, Texas, more particularly described in a deed recorded in Vol. 103, at page 150, of the Deed Records of said County.

(b) 1070 acres known as the Porter Ranch in Archer County, Texas.

(c) Marlborough Addition to the City of Wichita Falls, Texas, and/or its corporate successor, the Texas Investment Company.

(d) East ½ of Lot 10, North Anderson Ranch, Archer County, Texas.

(e) Southwest 60 acres of the N. Polk Land, Abstract 717, William Polk Preemption Survey, Archer County, Texas.

24.

Typical of the way and manner in which Peckham dealt with himself as an individual and himself as Trustee were his transactions behind Trust check No. 541 for $10,000.00, which was drawn on and payable to the plaintiff bank and deposited to the personal credit of the drawing Trustee. Between October 20, 1926 and December 7, 1926, Peckham personally bought mineral and/or royalty interest in Gray and Wheeler Counties, Texas, for an aggregate consideration of $14,800.00. He sold certain fractional interests thereof to United Royalty Company, to Tolowa Royalty Company, Wotola Royalty Company,

51 Murchison & Fain and J. T. Harrell, conveying certain fractional interests thereof to his own Trust and retaining a substantial interest therein himself, his profit in the entire transaction being $17,700.00. He directed the bookkeeper to enter upon the books of the Trust that the $10,000.00 check theretofore issued represented the Trust's purchase of these Gray and Wheeler County properties, and though he had advised the stockholders that the property had been acquired, he did not advise the stockholders that he, as an individual, had sold the properties to the Trust at a profit to himself, nor did he advise the stockholders that he had retained in his own name title to an interest in the certain respective properties which he was holding in trust for Wichita Royalty Company, such intent to hold in trust such properties additional to those actually conveyed being evidenced by a memorandum in his own handwriting in words and figures as follows, to-wit:

"Bought Wheeler County royalty for $44,800.00—Paid as follows, Webb $5,400.00, Johnson $4,000.00, Noel $5,000.00, Section 57 $8,400.00, Section 43 $2,000.00, Section 44 $4,000.00, Plummer $8,000.00, Section 12 was $8,000.00, sold Tolowa $30,500.00, sold Joe Art $1,000.00, sold J. T. Harrell $1,000.00, sold United Royalties $20,000.00, sold balance to Wichita Royalty Company for $10,000.00, which was exact cost paid."

25.

At the time when cross complainants first filed their cross action herein said Gray and Wheeler Counties properties had little or no value and no minerals ever having been discovered thereon and produced therefrom, in view of which it was the then opinion of E. E. Scannell, Trustee of Wichita Royalty Company, that it was for the best interests of the Trust and of its stockholders to repudiate the transactions above described and seek to

recover the monies wrongfully used by G. W. Peckham by the issuance of the above described Trust check No. 541. Cross complainants, therefore, first pleaded herein that such transaction was not binding upon them, made tenders with respect thereto, offered to do equity and sought judgment for the $10,000.00 with interest. Plaintiff bank, J. T. Harrell and Peckham Estate, however, resisted said position of the Trust and sought to establish and by judgment decree that said transactions were binding upon the Trust and that said Gray and Wheeler Counties properties rightfully belonged to the Trust, and that it had neither right nor remedy to do other than to accept as its own the title to all of the Gray and Wheeler Counties properties standing in the name of Wichita Royalty Company or G. W. Peckham at the time of the latter's death.

52

Upon the trial, the District Court denied the Trust its petition for said relief, and in legal effect sustained the position of the plaintiff bank and the Peckham Estate with respect to Gray and Wheeler Counties properties, from which adverse judgment the Trust appealed and which judgment was vacated by the Supreme Court by opinion reported in the 89 S. W. (2) 394.

Pending the appeal and final judgment of the Supreme Court minerals were discovered upon said Gray and Wheeler Counties properties, and oil and gas in paying quantities produced therefrom so that the value thereof at the time of the filing of this amendment is such as that E. E. Scannell, Trustee, is of the opinion that it is to the advantage of the Trust Estate to ratify, adopt and confirm Peckham's conveyances to the Trust with respect to Gray and Wheeler Counties properties, and his holding in his own name but in Trust for cross complainants all the remaining portions of Gray and Wheeler Counties purchases not sold by G. W. Peckham to others than the Wichita Royalty Company in his lifetime, the memo-

randum above evidencing Peckham's holding such unsold portions of said properties in trust for cross complainants.

E. E. Scannell, as Trustee, therefore invokes the jurisdiction of this Court to instruct him as Trustee with respect to his rights and duties in the premises, and to the extent that it be not inconsistent with such instructions of the Court said Trustee now claims title for Wichita Royalty Company to those mineral interests situated in Gray and Wheeler Counties, Texas standing of record
53 either in the name of Wichita Royalty Company or G. W. Peckham, and including:

Wheeler County.

(a) 1/128 plus 15/32 mineral interest as royalty in the NE ¼ of Section 47, Block 24, H&GN Ry. Co. Survey, Wheeler County, Texas.

(b) 1/256 plus 1/64 mineral interest as royalty in the W ½ of the SE ¼ of Section 43, Block 24, H&GN Ry. Co. Survey, Wheeler County, Texas.

(c) 1/256 plus 15/64 mineral interest as royalty in the E ½ of Section 54, Block 24, H&GN Ry. Co. Survey, Wheeler County, Texas.

(d) 1/16 mineral interest as royalty in the NW ¼ of Section 44, Block 24, H&GN Ry. Co. Survey, Wheeler County, Texas.

(e) 1/16 mineral interest as royalty in the N ½ of Section 45, Block 24, H&GN Ry. Co. Survey, Wheeler County, Texas.

(f) 1/16 mineral interest as royalty in the E ½ of Section 57, Block 24, H&GN Ry. Co. Survey, Wheeler County, Texas.

Gray County.

(a) 1/4 mineral interest as royalty in W ½ of the SE ¼ and the NE¼ of the SE¼ of Section 59, Block 25, H&GN Ry. Co. Survey, Gray County, Texas.

(b) 1/8 mineral interest as royalty in S 1/2, Section 61, Block 25, H&GN Ry. Co. Survey, Gray County, Texas.

(c) 1/64 mineral interest as royalty in NW ¼, Section 60, Block 25, H&GN Ry. Co. Survey, Gray County, Texas.

Typical also of the way and manner in which said former Trustee dealt in a dual capacity with the subject matter of his trust is the purchase of Stephens royalty from J. T. Harrell and C. E. Basham detailed above, whereby J. T. Harrell and other officers of the bank, the bank itself and G. W. Peckham personally profited, and which property so standing in the name of the Trust at the time E. E. Scannell became Trustee, and prior to the time when said substitute Trustee undertook, by cross action, to protect the interests of the stockholders, and at a time when he was operating the Trust under an agreed plan to conceal, he was induced to sell said Stephens Royalty and, therefore, since such sale has not been in position to repudiate said transaction, the purchaser thereof being innocent of any wrongdoing by the Trustee in the Royalty Company's acquisition of the interest, from which it follows that the Trust is now relegated to this, its suit, to recover against the Peckham Estate, J. T. Harrell and the Bank the profit which Peckham personally made in the transaction.

54

26.

A portion of the misappropriation by the Trustee Peckham was accomplished through the facilities of the bank upon checks for the most part payable to the bank's order

aggregating $55,219.44, which the Trustee caused his books to show as the purchase price and improvement cost of what is known as Marlborough Addition, but which transactions were carefully withheld and concealed from the stockholders. The vouchers referred to by the checks contained the notation that the purpose of the respective checks was to purchase and/or improve this addition. J. T. Harrell, G. W. Peckham and W. H. Peckham and another bought and for some six months developed a tract of land adjoining Wichita Falls as a townsite addition. The burden became heavy. Peckham was jointly obligated with the bank's President upon more than $50,000.00 as the unpaid purchase price of this land. Peckham was also indebted to the bank in excess of $28,000.00. His personal balance was $341.90. His credit was exhausted. The trust had lots of property and owed but little. Much money was needed further to improve Marlborough. Peckham and Harrell were friends; they were business associates. Peckham approached Harrell for a loan. A $25,000.00 loan was negotiated as above shown. Peckham personally indorsed the $25,000.00 note. He then issued trust check No. 478 for $17,623.70 drawn on and payable to the bank's order and received personal credit therefor with the bank. Thereupon G. W. Peckham got a deed to himself personally from his brother,
55 W. H. Peckham, to his brother's one-fourth interest in Marlborough Addition making G. W. Peckham, as an individual, the then owner of an undivided one-half interest in the Marlborough venture. It was, and is, the universal custom of banks and bankers when a ten to twenty-five thousand dollar loan is negotiated, that the bank learn by inquiry the purpose for which the money is required. The day this $17,623.70 check was deposited to Peckham's personal account and before another deposit was made to his personal account, and by the fifth day after Harrell's $25,000.00 loan, Peckham issued his personal check for $5,060.00, payable to J. T. Harrell and another officer of the bank, to pay a personal debt of Peckham to these gentlemen. Said check being paid

the date of its issuance, J. T. Harrell received a $2,530.00 credit at a time when but for the $17,623.70 trust check deposited to Peckham's account his balance would have been but $125.00 when Harrell cashed the $5,060.00 check.

Likewise G. W. Peckham paid W. H. Peckham in excess of $11,000.00 of said funds transferred from the Trust account to the personal account of G. W. Peckham, which sum in excess of $11,000.00 was deposited to the personal account of W. H. Peckham in plaintiff bank, and therefrom and simultaneously therewith W. H. Peckham paid therefrom to the plaintiff bank the amount of his personal indebtedness to the bank.

Later G. W. Peckham executed a deed to one-half interest in Marlborough, but it was never delivered but was left in the possession of a third party with instruction that it should not be recorded but should be concealed from everyone and no one permitted to see it or to know of its existence, and it was not the grantor's intention that the deed should be delivered. During his lifetime, Peckham treated the property as his own, exercised dominion over it, executed deeds of conveyance to part's thereof, signed releases of liens thereon, rendered the same for taxation as his own and never disclosed to anyone of any sale thereof, and in fact so acted as
56 to evidence his intention to claim personal title thereto in the event of its success but to repudiate the same and claim it to be a Trust loss in the event of failure.

Thus said $25,000.00 loan was made so that same might result, as it did result, in a transfer of a substantial portion thereof from the Trust account to the personal account of G. W. Peckham, and therefrom used in part to pay to officers of the bank Peckham's personal debt, including a payment to the plaintiff bank and J. T. Harrell and so therefrom Peckham might pay, as he did, his brother, W. H. Peckham, more than $11,000.00 so that W. H.

Peckham might, as he did, pay to the bank the balance of his private debt, all of which is pleaded as unauthorized act on the part of the Trustee, a breach of Trust by him of his fiduciary obligations, of the want of authority to execute the note for the sum so borrowed, and the active participation in breaches of trust by J. T. Harrell and the bank, and in support of the plea of non est factum and want of consideration for the obligation sued upon by the plaintiff bank.

27.

Wichita Royalty Company is sued herein upon its indorsement of Texas Investment Company's note payable to the bank. The maker of this note is the corporate successor of the Marlborough Addition partnership, shown above to have been formed in the fall of 1925. As shown, Peckham originally owned a quarter interest and subsequently purchased a similar interest from his brother, and was the record and equitable owner of a one-half of the Marlborough properties and liable for half of its debts at the time the above described $25,000.00 loan was negotiated for Peckham's personal benefit in March, 1926, as above pleaded. After having executed, but not having delivered, a deed to his interest, Peckham later joined J. T. Harrell and the other owner of Marlborough partnership in the formation of a corporation known as the Texas Investment Company, Peckham subscribing personally to one-half of the capital stock and the other partners their pro rata parts. Peckham joined in a deed to the corporation and the same was recorded. This corporation took title to this property free of the outstanding and unrecorded deed which Peckham had executed to his trust.

57

28.

Soon after the death of G. W. Peckham in November, 1929, the substitute Trustee, who theretofore had been

the bookkeeper of the Trust acting under the direction of Peckham and having but ministerial duties, and being the owner of no certificate of stock in the Trust during the period of time that Peckham was misappropriating the funds, became by appointment of Court the substitute Trustee, and W. H. Peckham became the administrator of Peckham's Estate. These two for a period of time after the death of G. W. Peckham carried out a series of negotiations looking to the satisfactory adjustment of all these matters of defalcation by the former Trustee so that it would not come out and be generally known, and the fraud of the deceased Trustee would be concealed. The substitute Trustee finding that the bank had not applied certain checks upon the Trust's note to the bank, and further finding additional discrepancies so that the total considered by him to be a discrepancy was $19,826.67, being the aggregate amount of the checks which were shown by the books to have been applied upon notes payable to the bank, but which were in fact not so applied, and the sale price by the Trust of two royalties shown on the books during Peckham's lifetime to have been accounts receivable by the Trust, but which the substitute Trustee found Peckham had personally collected and retained. This discrepancy was called to the administrator's attention, and the bank agreed to back Scannell up in the thing and it was agreed that the matter be concealed, the stockholders not being notified and the public not advised with a view to repaying the then considered defalcation out of the proceeds of a life insurance policy of more than $100,000.00.

29.

The substitute Trustee told an attorney that there was this $19,826.67 discrepancy and obtained the services of such attorney to prepare a proof of such claim to be filed with the administrator but said substitute
58 Trustee did not tell said attorney any of the other facts herein elsewhere pleaded and did not ask advice concerning the rights of the stockholders, nor

of the Trustee's duties as substitute Trustee with respect to all of the facts herein pleaded but simply requested said attorney to prepare a claim to be filed for, and covering specified items totaling as above shown. Said account was filed at a time when it was agreed by and between the substitute Trustee and the administrator of Peckham's Estate that the fraud of Peckham would be concealed so that it would not become generally known, and the existence of the $100,000.00 life insurance money and the administrator's promise to endeavor to work payment of the discrepancies out of such life insurance money, and other facts herein elsewhere pleaded, lulled the substitute Trustee into inactivity, and he actively joined in a continuation of the concealment of the former Trustee's fraud. He did not know what his rights were, and assumed and believed that Peckham had the right to deal between himself individually and himself as a Trustee without authority from, or notice to his stockholders. He further believed that he had no alternative as Trustee but to accept the properties that Peckham had conveyed to his trust, nor did he know that he could do other than to claim Marlborough Addition and/or its stock equivalent in the Texas Investment Company. He was without counsel and without advice when, with J. T. Harrell and the bank's lawyer, a stockholders and directors meeting was called and he was elected President of Texas Investment Company, was issued as Trustee one-half of the capital stock of the corporation, which in the meeting he indorsed as collateral security to the note herein sued upon, and which note he also indorsed as substitute Trustee. He subsequently renewed it some three or four times and paid thereon moneys of the Trust at a time when he was wholly oblivious to his rights and when he was joined in an effort to further conceal the facts from the stockholders.

59 30.

Finally when the bank had gotten him to renew several times the 1926 notes and the Texas Investment Com-

pany notes, had gotten him to accept stock in Marlborough Addition and had written up the minutes under the direction of counsel for the bank, and when the Trust had been tied in every possible way that under the circumstances it could be tied without disclosing to the stockholders what had transpired, the bank filed suit to collect the notes, first selling under the pledge all of the capital stock of Texas Investment Company to the bank and here suing for a deficiency existing after applying against the notes the bid of the bank.

31.

The bank then sued out an application for the appointment of a receiver and persuaded a District Judge improvidently to appoint such receiver, and which receiver took from the possession of said substitute Trustee all of the books and records of the Company and the possession of all of the assets of the Company.

32.

It was at this time that the substitute Trustee for the first time sought advice to determine what rights, if any, the stockholders had, and what duties, if any, he owed the stockholders in protecting them against the former frauds of his deceased friend. It was then for the first time that Scannell disclosed to any attorney the facts and circumstances herein elsewhere pleaded. Thereupon, and without delay, the substitute Trustee answered the bank's suit, pleading want of consideration and non est factum to the obligation declared upon by the bank, pleaded the facts herein pleaded in cross action against the bank and advised by letter the stockholders of what had transpired and what action he had taken, the stockholders by letters commending his action in bringing the suit.

33.

The checks above specifically pleaded as having been wrongfully charged against the Trust deposit and credited to the private account of the Trustee through the facilities of the bank and its active participation in the fraud, as well as items pleaded above as having been so diverted between the date G. W. Peckham qualified as Trustee and October 8, 1925, were wholly inoperative to lessen the Trust's deposit balance with the bank, each transaction being wholly without authority, and no demand and refusal to pay such monies by the bank so deposited has ever heretofore been made as to items occurring prior to October 8, 1925, and no demand for items subsequently occurring was made either during Peckham's lifetime nor during the period of concealment by the substitute Trustee, nor prior to the filing of the original cross action herein. Thus cross complainants now charge that $200,000.00 of Trust funds were deposited in plaintiff bank, and no authorized demand and payment thereof has ever been made, and the plaintiff bank is justly indebted to cross complainants, as their deposit balance, in the sum of $200,000.00. This suit then is brought as well for the recovery of said deposit balance as for the bank's active participation with G. W. Peckham in breaches of trust.

34.

Cross complainants say that not a single stockholder of Wichita Royalty Company, other than the Trustee, ever knew, prior to the institution of this suit, of any of the facts herein pleaded; that such facts were concealed from them; that such facts were well known to the bank, its officers, agents and employees; that the facts were themselves self-concealing; that the bank knew the monies deposited to Wichita Royalty Company's account were trust funds and that G. W. Peckham was but the Trustee thereof, representing parties beneficially inter-

ested and in the fiduciary capacity. The bank further knew that the Trustee had no right to use trust funds for personal purposes. The bank knew that Peckham had a personal account in the bank, a deposit checking account and also a note or liability account. It knew that Peckham over a long period of time, and in a series of transactions, all having the same character and involving the same element or plan was transferring large
61 sums of money from the Trust account to his personal account and usually at times when his personal account was in need of additional funds. The bank actively and knowingly aided him in making the transfer. Most of the checks were made payable to the bank's order. The bank knew the Trustee was commingling Trust funds with his personal funds, and knew that it was actively assisting him in doing so. It knew that Peckham was drawing checks on his personal account for personal purposes, an account which it knew was commingled funds. It further knew that every payment made from the commingled account for personal purposes would amount to a wrongful conversion of Trust funds. It knew that Peckham was indebted to it in large sums of money and that he was making payment on this debt from time to time to the bank by drawing checks on his personal account, which it knew was commingled funds of personal funds and Trust funds. It knew that he was using trust funds to pay a private debt. It knew that Peckham's personal credit rating would be increased by its participation with the Trustee in transferring Trust funds to Peckham's relatively small personal balance, monies which the bank knew he did not own. The bank aided him in making these transfers and then accepted his checks in payment of his personal debt to the bank.

Cross complainants further state that at the very beginning of his trusteeship G. W. Peckham was so derelict in the discharge of his duties as Trustee as that he forfeited any right to compensation in any amount

in that he "failed to use ordinary care in his administration, was guilty of gross negligence, repudiated the trust and claimed the property as his own, misappropriated trust funds, failed to keep proper records of trust administration, failed to account, filed an inaccurate or false account, made illegal investments, failed to invest trust property, mingled trust property with his own, was guilty of conduct warranting removal, was guilty of disloyalty to the cestuis in that he acted for his
62 own selfish interest, and failed to protect the Trust's property." See Trusts and Trustees, by Bogert, Vol. 4. Section 979, Pages 2879-2881 and cases there cited. Of Trust funds deposited to the account of and belonging to Wichita Royalty Company, G. W. Peckham transferred approximately $30,000.00 thereof to his private account, causing the books to show that such aggregate sum was made up of monthly payments of four or five hundred dollars each month as a salary, and while if the Trust had been administered by him faithfully he would, in an accounting, have been entitled to reasonable compensation, yet by reason of the way and manner in which he did administer the Trust he is, in accounting, entitled to no salary, and the plaintiff bank, having received a portion of such Trust funds in payment of Peckham's personal debt, and having received other and different funds in such payments, and having had actual knowledge and constructive notice of Peckham's lack of fidelity and of his agency's having determined, there was no authority for the salary checks to be drawn, for the transfers to be made and for the Trust to be charged therewith, the receipt of such monies being a misappropriation by the Trustee through the facilities and with the active participation by the plaintiff bank.

35.

The Supreme Court of Texas, among other holdings, has definitely decided that if and when it be shown, as

upon the other trial it was shown and upon this trial will be shown, that Peckham paid to the bank upon his personal debt any part of the moneys transferred from the Trust account to his own, that thereby the bank became an active participant in Peckham's misappropriations and was liable thereafter for every dollar of Trust funds transferred to Peckham's personal account that was not used for an authorized Trust purpose, excluding any transaction in which he had a personal interest. Such holding of the Court is thus quoted:

"It is apparent from what has been stated that the amount of the bank's liability is the difference between the total amount of the deposits for which Peck-
63 ham's personal account received credit after he began commingling trust funds with his own on October 8, 1925, and the total amount of withdrawals therefrom which the bank may show were used for authorized trust purposes. It conclusively appears that the bank is not entitled to credit for expenditures out of the commingled account for the purchase and improvement of Marlboro, or those transactions wherein Peckham acted in the dual role of buying as trustee from himself personally. * * *"

"In January and March, respectively, 1926, Harrell cashed Peckham's checks aggregating $15,088 in payment of a pre-existing indebtedness originating in Peckham's purchase from Harrell and Basham of the Stephens Royalty. Such payments were made by means of checks issued by Peckham upon a personal account in which Harrell knew both trust and personal funds were being deposited. Knowledge was thereby visited upon him of the trust nature of what he received in payment of Peckham's indebtedness. Harrell testified that "it was all alike" to him "whether the trust account was carried in the name of Wichita Royalty Company or G. W. Peckham," but inquiry pursued with reasonable diligence by Harrell in connection with Peckham's subsequent

dealings in which Harrell was also interested, including Marlboro, would have disclosed that Peckham was using trust funds in purchasing an interest in, and in improving, that addition. The measure of Harrell's liability to the trust is therefore determined, as a matter of law, on the basis of his actionable participation with Peckham."

Thus upon the re-trial, inquiry will be made as to when the bank received from the commingled account of Peckham payment upon the Trustee's private debt any amount, whether large or small, of moneys belonging to Wichita Royalty Company. As pleaded above, it will be definitely shown that short upon Peckham's becoming Trustee in 1923 the bank first received Trust funds in payment upon Peckham's personal debt to the bank, and thus, as has become the law of the case, the bank is liable thereafter for all funds transferred from the Trust account to Peckham's personal account and not used for authorized Trust purposes, excluding, of course, as held by the Supreme Court, transactions in which Peckham was personally interested. Thus this amendment pleads the misappropriations for 1923, 1924 and prior to October 8, 1925, demand for the restoration of which is now being made for the first time, whereas pleading heretofore sought but to recover misappropriations from and after October 8, 1925.

64

It has heretofore been demonstrated of record and admitted by the bank in writing that the first payment of Trust funds upon Peckham's private debt was no later than February 13, 1926, and by reference to Page 7, supra, the parties litigant can determine that practically all of the items sued for originally were transferred to Peckham's private account subsequent to such date. At Page 72 of the bank's brief in the Court of Civil Appeals upon the former trial, laid down the bank's contention that

"In order to determine whether or not the bank did receive any Trust funds, and the amount received, if

any, the rule to be applied is that when Trust money has been deposited in a joint account, in order to determine how much remains of said Trust fund on a given date, the minimum balance existing between that date and the date when the Trust funds were deposited, is the amount remaining and identifiable as trust funds."

Such rule, supported as a correct principal of law in Maryland Casualty Co. vs. City National Bank, 29 F. (2d) 662, is applied to the facts as developed upon the first trial in this language quoted from the bank's brief at Page 178-179.

"The first payment which the bank received from the G. W. Peckham account, with which it is alleged by the Appellant the trust funds were commingled, was November 17, 1925, in the amount of $1,007.23. (Brief of Appellant, pages 6-8.)

"The record does not disclose the minimum balance in the joint account between October 8, 1925, and November 17, 1925, the date of the first payment to The City National Bank, but if it be granted for the sake of argument, that there was enough of the trust funds on hand at the time this payment was made to pay the amount in full to the bank, by applying the rule set forth in this Counter Proposition, the bank would then be liable to the beneficiary in the sum of $1,077.23.

65 "The bank received no further payments from the joint fund from November 17, 1925, until February 13, 1926, at which time it received payment in the amount of $550.00.

"In the meantime, according to Appellant's claims, Peckham had diverted from the Wichita Royalty Com-

pany's account and deposited in his individual account, the following sums:

| | |
|---|---|
| Check No. 451—dated 12-28-25—in the amount of | $ 1,250.00 |
| Check No. 452—dated 1-4-26—in the amount of | 5,000.00 |
| Check No. 458—dated 1-11-26—in the amount of | 5,000.00 |
| Check No. 461—dated 1-18-26—in the amount of | 15,769.07 |

"The minimum balance in the joint account from January 18, 1926, the date of the last deposit of alleged trust funds in the joint account. to February 13, 1926, the date of the next payment to The City National Bank, is found to be, on February 2, 1926, the sum of $1,872.46.

"Hence, under the rule quoted in the above Counter Proposition, the whole payment to the bank would be from trust funds, and the bank would be liable in the sum of $550.00, which would be added to the above amount."

That thus upon the bank's records introduced in evidence upon the former trial and preserved by photostatic copies thereof, it was definitely established, and the bank so admitted, that on February 13, 1926, the bank received Trust funds to apply on Peckham's private debt. It thus follows that from and thereafter the bank is liable, as a matter of law, for unauthorized transfer and use of Trust funds by Peckham. It will, of course, be shown that similar payments were received during 1923, 1924 and subsequent years, all of which will be more specifically pleaded in an amendment later to be filed. It will likewise be demonstrated and specifically pleaded that such payments were so received by the bank near the very beginning of Peckham's trusteeship, and that from the bank records themselves it conclusively appears that such funds were so received under any rule of law

or method of computation suggested by any jurisdiction or text book writer, whether it be the minimum balance rule as contended for by the bank or other principals and methods.

66 36.

That The City National Bank of Wichita Falls, Texas, charter No. 4248, subsequent to the filing of this suit and prior to March 2, 1933, became, and on said last named date was insolvent, and having closed its doors March 2, 1933, because of such day's being a holiday, it never again opened its doors for business because by Presidential Proclamation and Treasury Regulations it was not permitted thereafter to do business because of its insolvent condition. At the time its doors were finally closed and long after it had become insolvent said plaintiff bank was indebted to cross complainants in the amounts herein elsewhere shown.

While insolvent and in contemplation of continued insolvency, and on the 15th day of March, 1933, and at a time when it had ceased to do business for approximately two weeks, said plaintiff bank transferred, assigned and pledged its assets to the newly created National Banking Corporation. City National Bank in Wichita Falls, charter No. 13,665, which bank was chartered on March 15, 1933. The terms and provisions of the contract between said banks on March 15, 1933, are well known to all parties to this litigation, and while such agreement will be in a subsequent amendment more specifically pleaded, yet it is but now referred to and made a part hereof as fully as though copied herein.

The Directors of the old bank participating in the Board's meeting whereby such contract was authorized and directed were L. H. Cullum, J. T. Harrell, Lesley Humphrey, Jack Jeffus, Oral Jones, Frank Kell, Joe Kell,

J. J. Perkins, C. W. Snider and F. P. Timberlake, from among whom the Officers and Directors of the new bank were selected, and the new bank knew the details of this litigation and knew of the indebtedness due cross complainants by said old bank, and knew the facts and circumstances giving rise to such liability.

It was the intended purpose of the Directors of the old bank to prefer certain creditors of the old bank and to transfer and hypothecate all of the assets of the old bank to the new bank that certain creditors might be paid in full to the exclusion of any payment whatsoever to cross-complainants.

67

37.

Such contract so entered into for such purpose and, were it legal, resulting in preferring certain creditors to the prejudice of cross-complainants as creditors of the old bank, was and is ineffectual and void, and the officers and agents of the new bank knew and/or were constructively charged with notice that no title to any of such assets passed to the new bank and that such directors of the old bank became, upon the insolvency of the old bank, trustees for the creditors and stockholders of the old bank, and such directors, as such trustees, and in whom the title to all of the assets of the insolvent bank vested, were without power or authority to make preferences, and their action in so doing was void, and their disposing of any property was a breach of their obligation to creditors, for which they are personally liable, and upon which liability suit is brought. Such transaction between the old and the new banks and the acts of the directors with respect thereto in thereby seeking to prefer other creditors to the prejudice of cross-complainants, were void both under the Texas law and the Federal law;

Under the Texas Law

(a) It is the law that though a National Bank is the creature of and is chartered by the Federal Government, yet National Banks doing business in Texas are subject to and controlled by the State law. See June 8, 1936, Advance Sheet of the Federal Reporter in National City Bank of New York vs. Continental National Bank & Trust Company of Salt Lake City, 83 Federal (2) 134, where the Circuit Court of Appeals for the 10th Circuit so held with quotation therein from McClellan vs. Chipman, 164 U. S. 347, 41 L. Ed. 461 as follows:

"National Banks 'are subject to the laws of the State, and are governed in their daily course of busi-
68 ness far more by the laws of the State than of the Nation. All their contracts are governed and construed by State laws. Their acquisition and transfer of property, their right to make their debts, and their liability to be sued for debts, are all based on State law.' * * *"

See Anderson vs. Gray, 281 F. 770, cited with approval April 8, 1936, in Bank vs. Bank, 83 F. (2d) at page 138, which we quote:

"Whether a conveyance will be held fraudulent as to creditors will be determined through the interpretation of the local statutes by the Federal Courts."

(b) The Texas law applying, it is settled that said transfer and preference were void under the Texas law because upon the Corporation's insolvency its assets became a trust fund for the ratable benefit of all of its creditors. See 11 Texas Jurisprudence 84, Section 421, and the Supreme Court Cases of Texas, supporting the principal that:

"The directors and officers of the corporation are at all times individually liable for any misapplication of the corporate assets. If the corporation is insolvent—a cardinal point being that it has ceased to transact ordinary business—the assets are considered in law to be trust property. They cannot then be legally transferred to or encumbered in favor of creditors in satisfaction of debts due by the company; nor can a creditor obtain preference for his debt by garnishment or attachment, or by any form of execution under a judgment."

The Trust Fund Doctrine is stated in 10 Texas Jurisprudence 680 et seq.:

" 'Now the doctrine that the officers of the corporation at all times owe a fiduciary duty to the stockholders and existing creditors is well supported by the Texas decisions,' and it is upon 'the insolvency of the corporation and the cessation of its business that the officers are trustees in the sense and with the implication that those dealing with the corporation through them as its representatives must treat them as trustees. A lien in favor of all creditors of the corporation then attaches to the corporate assets. Thereafter the corporation lacks power, and its officers are without authority to
69 dispose of its property except by way of liquidation for the benefit of all creditors equally.' * * *"

Under the Federal Law

(a) Under the plain direction of the Federal statute the attempted transfer, pledge and assignment of the old bank's assets to the new bank, with its resulting preference to the prejudice of cross-complainants, is void. We quote from Title 12, Section 91, United States Code Annotated:

"Transfers by bank and other acts in contemplation of insolvency. All transfers of the notes, bonds, bills of ex-

change, or other evidences of debt owing to any national banking association, or of deposits to its credit; all assignments of mortgages, sureties on real estate, or of judgments or decrees in its favor; all deposits of money, bullion, or other valuable thing for its use, or for the use of any of its shareholders or creditors; and all payments of money to either, made after the commission of an act of insolvency, or in contemplation thereof, made with a view to prevent the application of its assets in the manner prescribed by this chapter, or with a view to the preference of one creditor to another, except in payment of its circulating notes, shall be utterly null and void; and no attachment, injunction or execution, shall be issued against such association or its property before final judgment in any suit, action, or proceeding, in any State, county, or municipal Court."

(b) That the old bank was insolvent prior to and on March 2, 1933, as well as on March 15, 1933, is conclusively demonstrated by applying the law to existing facts. See Advance Sheet of the Federal Reporter of June 8, 1936, and the reported case of Kullman & Co. vs. Woolley, 83 F. (2d) 129, decided by Circuit Court of Appeals for this particular district.

That the Federal law is the same as the Texas law, supra, is demonstrated in the May 27, 1936, Advance Sheet of the North Eastern Reporter in the case of Miller vs. Bank, 1 N. E. (2d) 671, 677, from which we quote:

"In our opinion the rule with regard to National banks is not that they, like private corporations or individuals, may prefer certain creditors, but that an assignee bank which takes over the liabilities of a National Bank, which is in contemplation of insolvency, becomes liable to every person who might be found to be a depositor, and that the liability of the assignee bank is not limited to such deposit liabilities as are listed and acknowledged. Baird vs. First National

Bank (1927) 55 N. D. 856, 215 N. W. 810, 56 A. L. R. 200; Riegel vs. Planters' State Bank (1924) 100 Okl. 42, 227 P. 105. A proper action to enforce such an unlisted claim in our opinion is an equitable proceeding against the assignee bank which has taken over all of the real assets of the old bank. Chicago, I. & S. R. Co. vs. Taylor (1915) 183 Ind. 240, 108 N. E. 1; Okmulgee Window Glass Co. vs. Frink (C. C. A. 1919) 260 F. 159; Dobb et al. vs. Interstate Mortgage Co. Corporation (C. C. A. 1927) 20 F. (2d) 786."

This case was decided by the Appellate Court of Indiana against a successor bank under a contract similar to the one between the banks herein and wherein the new bank assumed and agreed to pay "only the depositors of the National Bank shown by the general ledger." The Court held that while in Indiana the Trust Fund Doctrine did not obtain (as it does in Texas) yet under the Federal law the same result is reached.

38.

Thus the new bank did not obtain title to the assets transferred to it except subject to the cross-complainants' rights, along with other creditors, to have the directors of the old bank, J. T. Harrell as Trustee of the old bank's assets and the new bank account for all of the assets of the old bank as of March 2, 1933, and to ratably distribute among all creditors such assets and to respond to cross-complainants for the amount of their debt against the old bank should the facts disclose that said directors and the said new bank have on hand less than sufficient assets in value to pay cross-complainants. All of which liability attaches and is justiciable aside from and before resort to the double liability of the stockholders of the old bank, which latter cause of action will arise upon judgment's being rendered herein.

71 That the debt due cross-complainants by the old bank was well known to the new bank on March 15, 1933, and to the directors of both the old and new bank, and no provision was made in said agreement nor has an agreement since been made for the payment of such other outstanding claims and liabilities including the claim herein asserted as existed on March 15, 1933.

39.

The old bank appointed C. E. Basham liquidating agent, and upon his resignation thereupon appointed E. A. Denton such officer, who is now functioning as such liquidating agent of the old bank, with J. T. Harrell named and designated as trustee of all of the assets of the old bank pledged to but not delivered into the custody of the new bank, and the old directors and such liquidating agent and former trustee, and all of said transactions were made with the view to prevent and unless assailed to result in an unequal distribution of the assets of the old bank to the prejudice of cross-complainants and such other, if any, creditors as then existed. That much of the assets of the old bank has been liquidated with numerous creditors paid in full, whereas these creditors suing herein have received nothing. And they now sue for themselves and all other creditors similarly situated, and invoke the general equity power of the Court to assert the liens upon all such properties for an accounting, for a restoration of such trust funds as may have been dissipated and/or paid to creditors above their ratable interest therein for the determination of the amount of personal liability of the old directors and for judgment thereon, all with the view and to the end that cross-complainants be accorded an equal participation in the assets of the old bank as every other creditor has or may obtain.

The amounts recoverable herein having been determined by the Supreme Court of Texas to bear interest

from demand evidenced by the filing of suit therefor, and liability from and after October 8, 1925,
72 having been asserted by suit therefor February 14, 1931, and liability for amounts occurring from January 1, 1923, to October 8, 1925, being now asserted for the first time, it is manifest that such respective amounts should bear interest from said respective dates of filing of said pleadings, and while the Supreme Court but permitted the recovery of interest thereon without expressly fixing the rate therefor, yet it is the law that the highest legal rate is chargeable in such cases as this and, therefore, cross-complainants now sue for interest upon the several amounts for said respective periods of time at the highest legal rate in Texas of 10%, compounded as provided by law. See Supporting Authorities Collated in Vol. XIV, Texas Law Review, Pages 126 et seq.

40.

The directors of the old bank who are sued herein, and perhaps other stockholders unknown to cross-complainants but well known to the other parties hereto, long prior to March, 1933, and at a time when the capital of the old bank had become impaired, and the same was in fact insolvent and was, as well, in contemplation of insolvency, and for the purpose of keeping the doors of the bank open and the bank functioning a while longer, personally borrowed upon their own credit from strangers to this suit large sums of money and paid the same into the old bank. The old bank was not a party to the borrowing of such money and was not liable as principal or otherwise to the persons from whom and the corporations from which said monies were borrowed by the stockholders and directors individually. Later, however, such directors and stockholders so personally borrowing money and advancing the same to the old bank were repaid by the banks herein involved in amounts and at times presently unknown to cross-complainants, but will

be ascertained and specifically pleaded in pleading later to be filed. Whereby and wherefrom it is manifest that such directors, defendants herein, undertook to prefer themselves among the bank's creditors at a time when they were trustees for all of the creditors of the
73 old bank, and their acts in so doing transgressed their authority and were in breaches of trust with respect to their obligations to all creditors. Therefrom arises a personal liability as to each and every director-defendant to restore and pay in to the trust fund, for the benefit of creditors, the payments made by the banks to them to the end and with the view that all creditors be permitted to participate in the assets of the old bank ratably, and that the preference thus sought by directors in their own favor at a time when they were charged by law of distributing the assets ratably between all creditors be declared illegal and void, and these creditors, along with all others, share in the ratable distribution of the assets of the old bank.

41.

Remembering that the Texas law applies to National banking corporations as well as to private corporations, as demonstrated by the Federal and State authorities, supra, it is manifest that said directors of the old bank, charged by law with ratably distributing the assets of the old bank among all creditors without preference to any, are personally liable to cross-complainants for the debt herein declared upon, such conclusion being plainly manifest from the decision of the Great Justice Gaines of the Texas Supreme Court in the case of National Bank vs. Texas Investment Company, 74 Texas 421, from which we quote:

"When one corporation transfers all its assets to another corporation and thus practically ceases to exist, without having paid its debts, the latter corporation takes the property subject to a lien in favor of the creditors of the

old company. This doctrine is distinctly asserted in 1 Jones on Liens, Sec. 85, et seq., and is supported by the following cases: Brum v. Ins. Co., 16 Fed. Rep., 140; Hibernia Ins. Co. v. Transportation Co., 13 Fed. Rep., 516; Harrison v. Ry. Co., 13 Fed. Rep., 522; Henson v. Britton, 88 Mo., 549; Blair v. Ry. Co., 24 Fed. Rep., 148; Fogg v. Ry. Co., 17 Fed. Rep., 871. * * *

74 "It is complained that the Court erred in sustaining the demurrers of the Traders National Bank and of H. C. Edrington. In so far we think the assignment is well taken. The petition averred that the 'Texas Investment Company,' being insolvent, transferred its assets to the 'Texas Investment Company, Limited'; that in consideration thereof the latter agreed to pay the debts of the former; that among the assets so transferred were 228 shares of the capital stock of the New Mexico Land & Cattle Company, and that the Traders National Bank and Edrington, with a full knowledge of the facts, had possessed themselves of said property, and that it had been pledged to the bank for borrowed money; that by reason of the premises the bank had made itself a trustee of the stock for the benefit of the creditors of the 'Texas Investment Company,' and that with the assistance of Edrington, a director, it had made some kind of transfer of the stock without applying the proceeds to the purposes of the trust. It follows from what we have heretofore said that if these facts be true that Edrington and the bank have made themselves liable to account to the creditors of the Texas Investment Company for the value of the shares so appropriated. * * *

"We are of the opinion that if, as alleged, the directors of the Texas Investment Company, Limited, misapplied the assets conveyed to it by the old company, they rendered themselves individually liable to the creditors of the latter to the extent of the assets so misapplied. * * * "

42.

While cross-complainants would not think of charging any director-defendant with a willingness to plead the technical defense of limitation to a debt to be determined justly due and owing by him, yet, if pleaded, such defense would be unavailing for many reasons, but one of which is thus pleaded:

As shown above, said director-defendants were agents and trustees of all of the creditors of the old bank and, as such, were charged by law with the duty of discharging such agency and exercising such trusteeship in the utmost good faith, holding and distributing properties coming into their hands in strict conformity with the applicable law stated above so that all creditors might ratably participate in such trust fund, of which the director-defendants were the agents for all of the creditors of the old bank. Cross-complainants relied upon the
75 director-defendants and said banks to discharge their respective agencies and to regard their trusteeship, and cross-complainants had no notice, knowledge or information of any kind or character that such agents and trustees had or would fail to comply with every requirement of law imposed upon them as such agents and trustees, but relied implicitly upon their business acumen and fair dealing, and were lulled into inactivity by reason of repeated statements by the director-attorney for the bank that if and when Wichita Royalty Company recovered a judgment against the bank it would be paid.

Furthermore, there was no duty resting upon cross-complainants to make inquiry or to inquire into the fidelity of the director-defendants to determine whether in fact they were discharging the several duties imposed upon them by law. All of which they had a right to do as the Supreme Court of Texas has determined in this very case, and as reflected on Page 406 of the 89 S. W. (2d), wherein it was held that cross-complainants

"were under no duty to check the conduct of Peckham, the bank, and Harrell. As expressed by Chief Justice Hickman (now commissioner), in reversing and rendering judgment for a principal in Security State Bank v. Burton (Tex. Civ. App.) 10 S. W. (2nd) 201, 204, writ of error refused: 'No such duty (to check up the conduct of an agent) rested upon appellant. It had the right to rely implicitly upon the good faith of its agent, and owed no duty whatever to investigate the acts of its agent, in order to determine whether such agent was truly representing it.' * * * "

43.

Among the assets owned and possessed by the old bank is all of the land and those premises known as Marlborough Addition to the City of Wichita Falls, Texas, and those lands standing in the name of Texas Investment Company, because the old bank acquired and still owns all of the capital stock of Texas Investment Company and equitably owns and is entitled to the possession of all lands, personal property and choses in action standing in the name of Texas Investment Company, in-
76 cluded in which are the unsold lots of Marlborough Addition, and the equitable title to all lands heretofore sold therein but unpaid for by the purchaser thereof, as well as all notes and accounts receivable and liens upon said land securing obligations. The Texas Investment Company is, therefore, made a party hereto that the title to all of its assets be declared to belong to the old bank, and for the fixing and foreclosing of an equitable lien thereon in favor of cross-complainants and for general and special relief with respect thereto, for which prayer is made.

44.

G. W. Peckham was insolvent at the time of his death, and his Estate is still insolvent, and Wichita Royalty Company has retained and still retains properties con-

veyed to it in breach of trust, excluding those specifically tendered above, under a claimed and asserted lien thereon to secure it in payment of the indebtedness justly due and owing it by G. W. Peckham at the time of his death. And upon their subsequently amending their pleading, cross-complainants will more particularly plead with respect to such properties of the income therefrom, the application thereof and the facts relating thereto.

45.

Cross-complainants say that those who are sued herein are justly indebted to cross-complainants in the sum of $200,000.00, that the diference between the monies belonging to the trust deposited with the old bank and such funds as were withdrawn therefrom rightfully is $200,000.00, and that the indebtedness arising in cross-complainants favor from and after the bank's first notice of Peckham's breaches of trust, and from and after Harrell's first having notice thereof, by reason of the matters and things herein elsewhere shown and in which the bank and Harrell actively participated, with liability attaching therefor, is $200,000.00, and that such liability arising prior to October 8, 1925, bears interest from the date of the filing of this amendment at the rate of 10% per annum, and the liability arising thereafter bears interest at 10% per annum from February 14, 1931.

77

46.

Cross-complainants say that with a view to preventing cross-complainants from prosecuting this litigation and in an endeavor to extort from cross-complainants the obligations declared upon by the bank, for which no obligation rested upon the trust, a series of acts and conduct was pursued, beginning with placing the trust and all of its assets and properties in receivership, and the writing

of letters to all purchasing companies of oil accruing to cross-complainants, requesting the withholding of payment for oil purchased from such properties, the obtaining of judgment and its abstracting in several counties of the state, filing of a suit in Oklahoma, and the running of an attachment against all of the trust's Oklahoma properties, and generally taking such steps as to thwart an appeal by the trust from an adverse judgment, but notwithstanding which the appeal was prosecuted, judgment vacated, the Oklahoma suit dismissed, garnishment suit against several purchasing companies dissolved, with recovery by the trust of legal interest on the funds impounded by garnishment, although there are other funds still impounded, and in furtherance of said purpose the bank has now made certain oil companies parties hereto so that the trust will be further hampered in the trial of this case.

47.

Therefore, cross-complainants now sue Humble Oil & Refining Company, a corporation, with office and agents in Harris County, Texas; Continental Oil Company, a corporation, with office and agents in Tarrant County, Texas; and The Texas Company, a corporation, with office and agents in Tarrant County, Texas; and Leslie Humphrey, a resident of Wichita County, Texas; and say that said corporations are justly indebted to Wichita Royalty Company in large sums of money which
78 are increasing from month to month by reason of current purchases of oil produced from properties in the name of Wichita Royalty Company, and cross-complainants have been without the use of said monies for a long period of time to damage in the amount of 6% per annum thereon. No valid and legal reasons existed, nor does any such reason now exist, for the withholding of payment by said purchasing companies of the proceeds of said oil, and either such companies and/or the bank and its director-attorney, Leslie Humphrey, are liable to cross-

complainants for damages sustained in the unlawful withholding of such payments, for which suit is brought, and for the recovery of which prayer is made.

48.

The bank has been and is represented by Leslie Humphrey and Tarlton Morrow, resident citizens of Wichita County, Texas, who, while said bank was insolvent and at a time said counsel knew of such insolvency, each received substantial monies, the amount of which and the time of receiving same being unknown to cross-complainants but well known to them, and the result thereof was to make of them a preferred creditor of the bank to the prejudice of cross-complainants; and Wichita Royalty Company now complains of them and asks that they be required to account for every dollar so received from said bank, pending this litigation, and that the same be restored to the trust fund from which it was taken to the end that they be not preferred as creditors of the old bank but that cross-complainants be permitted ratably to participate in all of the assets of said bank. Tarlton Morrow is, therefore, made a party hereto, upon the allegation that his residence is in Wichita County, Texas, and that he is liable to cross-complainants in the manner and to the extent last above shown, and for judgment thereon prayer is respectfully made.

49.

Wherefore prayer is made:

79 (a) That plaintiff take nothing by its suit and that all costs be taxed against the plaintiff.

(b) That cross-complainants recover of and from the parties sued herein, jointly and severally, the sum of

$200,000.00 with interest from the date of the filing of this amendment at 10% upon that portion thereof arising prior to October 8, 1925, and for such interest upon the remaining portion thereof from February 14, 1931.

(c) That an accounting be had between all parties hereto and that each and every party litigant be required to state that which has been received and that which has been expended with respect to the money matters herein involved.

(d) That the old bank be declared to have been insolvent when payments were made by it to the several parties hereto, and that its assets be decreed to be a trust fund for the benefit of all creditors, and that such creditors, parties hereto, who have been preferred be required to restore the amounts received to the trust fund. That all creditors of the old bank be given notice of the pendency of this suit and permitted to intervene herein and set up their rights with respect to such trust fund, and that such fund be ratably distributed between the creditors of the old bank existing at its insolvency.

(e) That cross-complainants have judgment against the several parties hereto in the particulars and for the amounts, with interest thereon, as herein above set out.

(f) That all costs of suit be taxed against those shown to be liable to cross-complainants, and that cross-complainants be discharged from payment of any cost.

(g) And that cross-complainants be accorded such other and further, general and special, legal and equitable relief to which they may be entitled.

KILGORE & ROGERS,
Attorneys for Cross-Complainants.

80 State of Texas,
County of Wichita.

E. E. Scannell, on oath, says that he is Trustee of Wichita Royalty Company, has read the above and foregoing amended pleading, and that the facts therein stated are true.

E. E. SCANNELL.

Sworn to and subscribed before me this, the 18th day of June, 1936.

GRACE JARNAGAN,
(Seal) Notary Public, Wichita County, Texas.

Indorsed: Number 24549-A, The City National Bank of Wichita Falls, Texas vs. Wichita Royalty Company, et al. Third Amended Original Answer, Cross-Action and Inter-Pleader. Filed June 18, 1936, R. L. Sanderford, District Clerk, Wichita County, Texas, by Irving Garner, Deputy.

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## PETITION FOR REMOVAL OF CITY NATL. BANK, ET AL.

81 Filed July 1, 1936.

(Title Omitted.)

To the Honorable Judge of said Court:

Your petitioners, The City National Bank of Wichita Falls, Texas, a national banking association duly incorporated under the laws of the United States of America; City National Bank in Wichita Falls, also a national banking association duly incorporated under the laws of the United States of America; J. T. Harrell, individually and as trustee of The City National Bank of Wichita Falls, Texas, a corporation aforesaid; Texas Investment

Company, a private corporation incorporated under the laws of the State of Texas; E. A. Deaton, Liquidating Agent of The City National Bank of Wichita Falls, Texas, a national banking association aforesaid; L. H. Cullum, Leslie Humphrey, Jack Jeffus, Tarlton Morrow, Oral Jones, Frank Keil, Joe Keil, J. J. Perkins, C. W. Snider, F. P. Timberlake, and W. H. Peckham, Administrator of the Estate of G. W. Peckham, deceased, come now and file their petition for removal of this cause from the District Court of Wichita County, Texas, for the 30th Judicial District of Texas, wherein said cause is now pending, to the District Court of the United States of the Northern District of Texas for the Wichita Falls Division, held in the City of Wichita Falls in said district and state, and for grounds for said removal say:

I.

That The City National Bank of Wichita Falls, Texas, and City National Bank in Wichita Falls are each national banking associations created and incorporated
82 under the laws of the United States of America; that E. A. Deaton is the Liquidating Agent of The City National Bank of Wichita Falls, Texas, acting pursuant to a vote of the stockholders made in accordance with the laws of the United States, Section 181, as amended, of Title 12, United States Code Annotated, and is an officer charged under the laws of the United States with the winding up and liquidation of said banking association; that J. T. Harrell is sued as trustee of said The City National Bank of Wichita Falls, Texas; that the remaining defendants, except W. H. Peckham, Administrator aforesaid, and Tarlton Morrow, are sued as directors of The City National Bank of Wichita Falls, Texas, a national banking association in liquidation; that W. H. Peckham is sued as Administrator of the Estate of George W. Peckham, deceased, and Tarlton Morrow is sued to account for and disclose an alleged preference

received by him from The City National Bank of Wichita Falls, Texas, a national banking association in liquidation; that the cause of action presented against these petitioners is by an independent suit and interpleader filed herein on June 18, A. D. 1936, by the Wichita Royalty Company a trust estate, and E. E. Scannell, its Trustee, plaintiffs in said cross-petition and interpleader against the petitioning defendants herein.

II.

That the above entitled action, cross-petition and interpleader aforesaid is of a civil nature and in equity, and is a suit which arises under the Constitution and laws of the United States, in that this case involves a Federal question and questions as follows:

That it is a suit commenced against a national banking association, namely, The City National Bank of Wichita Falls, Texas, and E. A. Deaton, its Liquidating Agent, as well as J. T. Harrell, its alleged trustee, for
83 the winding up of the affairs of such bank and to equitably distribute its assets among all of the creditors of said bank, as is apparent from said cross-petition and interpleader filed herein.

That it is a suit arising under the Constitution and laws of the United States in this: It is a suit to establish a deposit liability of $200,000 in favor of the plaintiffs Wichita Royalty Company and E. E. Scannell, its trustee, and against The City National Bank of Wichita Falls, Texas, and its Liquidating Agent, E. A. Deaton, whose duties arise under the Constitution and laws of the United States in liquidating the said bank and to declare void as a preference certain assets assigned and transferred by The City National Bank of Wichita Falls, Texas, to the City National Bank in Wichita Falls, and to the other named defendants joining in this petition for removal, except that defendant W. H. Peckham, Administrator

aforesaid, that is to say, it is so alleged in said petition that The City National Bank of Wichita Falls, Texas, is a national banking association chartered under the laws of the United States and it is alleged that it became insolvent on March 2, 1932, and closed its doors by virtue of the presidential proclamation and treasury regulations pertaining thereto and was not thereafter permitted to do business because of its insolvent condition; that it alleged that at the time it closed its doors and became insolvent it was indebted to the plaintiffs, Wichita Royalty Company and E. E. Scannell, its trustee, in the sum of $200,000, by virtue of a deposit and deposits of said sum in said alleged insolvent bank; that it is alleged that on the 15th day of March, at a time when it ceased to do business it assigned and pledged its assets to the City National Bank in Wichita Falls, likewise a national banking association created and incorporated under the
84 laws of the United States of America; that the directors, individual petitioners herein, authorized and directed such transfer of said assets and that it was the intention by virtue of said transfer and that said transfer effected a purpose to prefer certain creditors of the old bank, that is, The City National Bank of Wichita Falls, Texas, as against the Wichita Royalty Company and E. E. Scannell, its trustee, and said petition alleges that such transfer was ineffectual and void and seeks to set aside said transfer as a preference in favor of the City National Bank in Wichita Falls and in favor of the other named defendant joining herein as petitioners and for an accounting.

That the suit is brought under and by virtue of Section 91, Title 12, United States Code Annotated, of the laws of the United States of America, to set aside a preferential transfer made by a national banking association now in liquidation, the Liquidating Agent being a party to said suit.

That the suit likewise is against an alleged insolvent national banking association to set aside preferential transfers allegedly made by said national banking association after its insolvency, and to declare a trust upon such assets so assigned in favor of said plaintiffs, Wichita Royalty Company and E. E. Scannell, its trustee, the prayer being to recover a deposit liability allegedly due of $200,000, with interest, for an accounting between The City National Bank of Wichita Falls, Texas, the City National Bank in Wichita Falls, the Liquidating Agent of The City National Bank of Wichita Falls, Texas, and the other petitioning defendants herein, and to declare The City National Bank of Wichita Falls, Texas, insolvent and to treat its assets as a trust fund for the benefit of all creditors and with a prayer that all other creditors be given notice of the pendency of this suit and be permitted to intervene therein; that this cause is
85 therefore governed by the national banking laws of the United States in respect to such claims and claims of the plaintiff Wichita Royalty Company.

Reference is hereby made to the third amended original answer, cross-action, and interpleader filed herein by the Wichita Royalty Company, a joint stock association, and E. E. Scannell, on June 18, 1936, and made a part hereof for all purposes, to show more particularly and accurately the nature of said cross-action and interpleader and which cross-action and interpleader so referred to and made a part hereof shows that this is a suit of a civil nature in equity, arising under the Constitution and laws of the United States.

That the suit, as aforesaid, is one to determine the liability of an allegedly insolvent national bank and to fix such liability against its Liquidating Agent, appointed pursuant to the statutes and laws of the United States of America, and to distribute ratably its assets among its creditors, and to declare as void an alleged transfer and pledge of its assets made at a time when it was allegedly insolvent.

That the rights upon which said suit and action is based are created and determined by the laws of the United States as is more fully shown from the cross-petition and interpleader here referred to.

III.

That the matter in dispute herein, exclusive of interest and costs, exceeds the sum of $3,000 and is the sum of $200,000, as shown by said pleading.

IV.

That the time for pleading to said cross-petition and interpleader, under the laws of the State of Texas and/or any rule of this Court, has not yet expired and your petitioners have not yet appeared or pleaded to said cross-petition and interpleader the Wichita Royalty
86 Company, a joint stock association, and E. E. Scannell, its trustee, had theretofore filed a cross-action against The City National Bank of Wichita Falls, Texas, and J. T. Harrell, but none of the other defendants hereinabove named were made parties to the same and no Federal question relating to the winding up of an insolvent national bank, the distribution of its assets, the matters relating to the creation of preferences were presented in said former pleadings, and this is the first time that any pleading, complaint, or petition has been filed by the said Wichita Royalty Company and E. E. Scannell, its trustee, raising a Federal question, that is, this is the first and only action filed by said cross-complainant which arises under the Constitution and laws of the United States of America, and none of the parties petitioning for removal herein have appeared or pleaded to said cross-petition and interpleader, nor has the time yet expired for such pleading under the laws of this State or any rule of this Court.

V.

That the controversy herein, as to these petitioning defendants is a separable controversy from that presented by the Wichita Royalty Company and E. E. Scannell against the other parties to this proceeding, namely, against William Peckham and George Peckham, minor sons of G. W. Peckham, Robert W. Peckham and Hazel D. Peckham, son and surviving wife, respectively, of G. W. Peckham, deceased, and the Humble Oil & Refining Company, a corporation, The Texas Company, a corporation, and the Continental Oil Company, a corporation; that a complete determination of said controversy can be had without the presence of the last named defendants and that said defendants are neither indispensable nor necessary parties to a complete determination of this controversy between the Wichita Royalty Company and E. E. Scannell, trustee, plaintiffs herein, and the defendants petitioning herein for removal.

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VI.

Your petitioners herewith tender a good and sufficient bond, conditioned according to law, for their entering into the District Court of the United States for the Northern District of Texas for the Wichita Falls Division within thirty days from the filing of this petition for removal a certified copy of the Record in this action, and for the payment of all costs that may be awarded by said District Court of the United States if said Court shall hold that this action was wrongfully or improperly removed thereto.

Wherefore, your petitioners pray that this Court will proceed no further herein, except to make an order of removal of this cause to said District Court of the United States in and for the Northern District of Texas at the Wichita Falls Division and to accept said bond and

cause the Record herein to be removed to said United States District Court.

THE CITY NATIONAL BANK OF WICHITA FALLS, TEXAS,
By J. T. HARRELL, President,
CITY NATIONAL BANK IN WICHITA FALLS,
By J. T. HARRELL, President,
J. T. HARRELL,
Individually & Trustee of the City National Bank of Wichita Falls, Texas,
TEXAS INVESTMENT COMPANY,
By E. A. DEATON, President.
E. A. DEATON,
Liquidating Agent of The City National Bank of Wichita Falls, Texas.

FRANK KELL,
TARLTON MORROW,
LESLEY HUMPHREY,
JACK JEFFUS,
L. H. CULLUM,
F. P. TIMBERLAKE,
ORAL JONES,
J. J. PERKINS,
C. W. SNIDER,
JOE KELL,
W. H. PECKHAM,
Administrator of the Estate of G. W. Peckham, deceased.

88 The State of Texas,
County of Wichita.

I, J. T. Harrell, President of The City National Bank of Wichita Falls, Texas, and likewise President of the City National Bank in Wichita Falls, each national bank-

ing associations, on oath deposes and says that said respective banks above named are defendants in the above cause; that he has read the foregoing petition and knows the contents thereof and that the matters and things therein set forth are true, and that he is the President of each of said respective banks and duly authorized to make this affidavit.

J. T. HARRELL.

Sworn to and subscribed before me this 1st day of July, A. D. 1936.

L. A. WARD,
(Seal) Notary Public, Wichita County, Texas.

The State of Texas,
County of Wichita.

E. A. Deaton, President of the Texas Investment Company, a corporation, defendant in the above cause, on oath deposes and says that he is President of the Texas Investment Company, a corporation; that it is a defendant in the above cause; that he has read the foregoing petition and knows the contents thereof, and that the matters and things therein set forth are true.

E. A. DEATON.

Sworn to and subscribed before me, this 1st day of July, A. D. 1936.

L. A. WARD,
(Seal) Notary Public, Wichita County, Texas.

89 The State of Texas,
County of Wichita.

E. A. Deaton, L. H. Cullum, Leslie Humphrey, Tarlton Morrow, Jack Jeffus, Oral Jones, Frank Kell, Joe Kell, J. J. Perkins, C. W. Snider, F. P. Timberlake, and W. H. Peckham, Administrator of the Estate of George W. Peckham, deceased, defendants in the above cause, on

oath each depose and say that they and each of them are defendants in the above cause; that they and each of them have read the foregoing petition and know the contents thereof, and that the matters and things therein set forth are true.

E. A. Deaton further says upon his oath that he is the Liquidating Agent of The City National Bank of Wichita Falls, Texas, and W. H. Peckham says that he is the Administrator of the Estate of G. W. Peckham, deceased.

J. T. HARRELL,
LESLIE HUMPHREY,
JACK JEFFUS,
L. H. CULLUM,
FRANK KELL,
E. A. DEATON,
JOE KELL,
F. P. TIMBERLAKE,
W. H. PECKHAM,
ORAL JONES,
C. W. SNIDER,
J. J. PERKINS,
TARLTON MORROW.

Sworn to and subscribed before me by each of the above named parties this 1st day of July, A. D. 1936.

L. A. WARD,
(Seal) Notary Public, Wichita County, Texas.

Indorsed: Number 24549-A, The City National Bank of Wichita Falls, Texas, vs. Wichita Royalty Company, et al. Petition for Removal. Filed July 1, 1936, at 10:00 o'clock A. M. R. L. Sanderford, District Clerk, Wichita County, Texas, by Edna Berner, Deputy.

## NOTICE OF INTENTION TO REMOVE BY CITY NATL. BANK, ET AL.

90 Filed July 1, 1936.

(Title Omitted.)

To Wichita Royalty Company, a Joint Stock Association, and E. E. Scannell, Cross-Complainants, and Kilgore & Rogers and Ray Bland, Attorneys:

You and each of you will please take notice that on Wednesday, the 1st day of July, A. D. 1936, at ten o'clock A. M. the defendants in the cross-action and interpleader filed herein by the Wichita Royalty Company, a joint stock association, and E. E. Scannell, trustee, which defendants are as follows:

The City National Bank of Wichita Falls, Texas,
City National Bank in Wichita Falls,
J. T. Harrell,
Texas Investment Company,
E. A. Deaton,
L. H. Cullum,
Leslie Humphrey,
Jack Jeffus,
Tarlton Morrow,
Oral Jones,
Frank Kell,
Joe Kell,
J. J. Perkins,
C. W. Snider,
F. P. Timberlake,
W. H. Peckham.

will file in the above named Court their petition and bond as required by law for the removal of said cause from the above entitled Court to the District Court of the United States for the Northern District of Texas, Wichita Falls Division, and also a bond in the sum of Two Thou-

sand Dollars ($2,000.00), given on such removal according to law and the requirements of the statutes in such case made and provided, and copies of said petition and bond are herewith served and delivered, and upon the filing of said petition and bond, the defendants aforesaid will present and call to the attention of the said District Court of Wichita County for the 30th Judicial
91 District of Texas, the said petition and bond, and move the said District Court of Wichita County, Texas, for an order of removal of said cause from said District Court of Wichita County, Texas, to the District Court of the United States for the Northern District of Texas, Wichita Falls Division, and the said motion and petition for removal is upon the grounds as stated in said petition and upon said petition and bond so filed and presented.

T. R. BOONE,
Attorney for J. T. Harrell.
LESLIE HUMPHREY AND
TARLTON MORROW,
Attorneys for the other petitioning defendants, except W. H. Peckham, Administrator.
ARCH DAWSON,
Attorney for W. H. Peckham, Administrator of the Estate of G. W. Peckham, Deceased,
By LESLIE HUMPHREY.

Receipt is acknowledged of a true copy of this notice together with a copy of the petition and bond accompanying the same.

KILGORE & ROGERS,
By GUY ROGERS,
Attorneys for Wichita Royalty Company and E. E. Scannell, Trustee.

July 1, 1936, at 9:45 a. m.
E. T. DUFF.

Indorsed: Number 24549-A, City National Bank of Wichita Falls, Texas, vs. Wichita Royalty Company, et al. Notice of Intention to Remove. Filed July 1, 1936. R. L. Sanderford, District Clerk, Wichita County, Texas, by Edna Berner, Deputy.

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BOND FOR REMOVAL OF CITY NATL. BANK, ET AL.

92 — Filed July 1, 1936.

(Title Omitted.)

Know all Men by these Presents: That the undersigned, The City National Bank of Wichita Falls, Texas, a national banking association duly incorporated under the laws of the United States of America; City National Bank in Wichita Falls, also a national banking association duly incorporated under the laws of the United States of America; J. T. Harrell, individually and as trustee of The City National Bank of Wichita Falls, Texas, a corporation aforesaid; Texas Investment Company, a private corporation incorporated under the laws of the State of Texas; E. A. Deaton, Liquidating Agent of The City National Bank of Wichita Falls, Texas, a national banking association aforesaid; L. H. Cullum, Leslie Humphrey, Jack Jeffus, Tarlton Morrow, Oral Jones, Frank Kell, Joe Kell, J. J. Perkins, C. W. Snider, F. P. Timberlake, and W. H. Peckham, Administrator of the Estate of G. W. Peckham, deceased, as principals, and the other subscribers hereto, as sureties, are held and firmly bound unto the Wichita Royalty Company a joint stock association operating under a declaration of trust, and E. E. Scannell, trustee, plaintiffs in the cross-action in the above cause against the undersigned defendants, in the sum of Two Thousand ($2,000.00) Dollars, for the pay-

ment of which well and truly to be made unto the said Wichita Royalty Company, a joint stock association operating under a declaration of trust, and E. E. Scannell, its Trustee, their successors and assigns, we do jointly and severally bind ourselves, our heirs, legal representatives and assigns firmly by these presents.

The conditions of the above bond are as follows:

That, whereas, the above bounden The City National Bank of Wichita Falls, Texas, a national banking association duly incorporated under the laws of the United States of America; City National Bank in Wichita Falls, also a national banking association duly incorporated under the laws of the United States of America; J. T. Harrell, individually and as trustee of The City National Bank of Wichita Falls, Texas, a corporation aforesaid; Texas Investment Company, a private corporation incorporated under the laws of the State of Texas; E. A. Deaton, Liquidating Agent of The City National Bank of Wichita Falls, Texas, a national banking association aforesaid; L. H. Cullum, Leslie Humphrey, Jack Jeffus, Tarlton Morrow, Oral Jones, Frank Kell, Joe Kell, J. J. Perkins, C. W. Snider, F. P. Timberlake, and W. H. Peckham, administrator of the Estate of G. W. Peckham, deceased, principals, have filed their petition in the District Court of Wichita County, Texas, for the removal to the District Court of the United States of the Northern District of Texas for the Wichita Falls Division of a certain cause pending in said District Court of Wichita County for the 30th Judicial District of Texas, wherein the Wichita Royalty Company, a joint stock association, and E. E. Scannell, its trustee, are plaintiffs in a cross-action and interpleader filed herein against The City National Bank of Wichita Falls, Texas, a national banking association duly incorporated under the laws of the United States of America; City National Bank in Wichita Falls, also a national banking association duly

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incorporated under the laws of the United States of America; J. T. Harrell, individually and as Trustee of The City National Bank of Wichita Fals, Texas, a corporation aforesaid; Texas Investment Company, a private corporation incorporated under the laws of the State of Texas; E. A. Deaton, Liquidating Agent of The City National Bank of Wichita Falls, Texas, a national banking association aforesaid; L. H. Cullum, Jack Jeffus, Tarlton Morrow, Oral Jones, Frank Kell, Joe Kell, J. J. Perkins, C. W. Snider, F. P. Timberlake, and W. H. Peckham, Administrator of the Estate of G. W. Peckham, deceased, defendants:

Now, Therefore, if the said The City National Bank of Wichita Falls, Texas, a national banking association duly incorporated under the laws of the United States
94 of America; City National Bank in Wichita Falls, also a national banking association duly incorporated under the laws of the United States of America; J. T. Harrell, individually and as trustee of The City National Bank of Wichita Falls, Texas, a corporation aforesaid; Texas Investment Company, a private corporation incorporated under the laws of the State of Texas; E. A. Deaton, Liquidating Agent of The City National Bank of Wichita Falls, Texas, a national banking association aforesaid; L. H. Cullum, Leslie Humphrey, Jack Jeffus, Tarlton Morrow, Oral Jones, Frank Kell, Joe Kell, J. J. Perkins, C. W. Snider, F. P. Timberlake, and W. H. Peckham, Administrator of the Estate of G. W. Peckham, deceased, shall within thirty days from the date of the filing of said petition for removal enter in the said District Court of the United States a certified copy of the Record in said cause, and shall well and truly pay all the costs that may be awarded by said District Court of the United States if said Court shall hold that said cause was wrongfully or improperly removed thereto, then this obligation shall be null and void; otherwise to remain in full force and effect.

Witness our hands, this 30th day of June, A. D. 1936.

THE CITY NATIONAL BANK OF WICHITA FALLS, TEXAS,
By J. T. HARRELL, President,
CITY NATIONAL BANK IN WICHITA FALLS,
By J. T. HARRELL, President,
J. T. HARRELL,
Individually & Trustee of the City National Bank of Wichita Falls, Texas.

TEXAS INVESTMENT COMPANY,
By E. A. DEATON, President.
E. A. DEATON,

Liquidating Agent of The City National Bank of Wichita Falls, Texas.

95 FRANK KELL,
TARLTON MORROW,
LESLIE HUMPHREY,
JACK JEFFUS,
L. H. CULLUM,
JOE KELL,
F. P. TIMBERLAKE,
ORAL JONES,
J. J. PERKINS,
C. W. SNIDER,
W. H. PECKHAM,

Administrator of the Estate of G. W. Peckham, deceased, Principals.

THE FIDELITY & CASUALTY CO. OF NEW YORK, Surety,
By GROVER C. BULLINGTON,
Attorney, Sureties.

The foregoing bond and the surety thereon is approved by me this the 1st day of July, A. D. 1936.

IRVIN J. VOGEL,
Judge, 78th District Court, sitting as Judge of the 30th District Court, Wichita County, Texas.

Indorsed: Number 24549-A, The City National Bank of Wichita Falls, Texas, vs. Wichita Royalty Company, et al. Bond for Removal. Filed July 1, 1936, at 10:00 A. M. R. L. Sanderford, District Clerk, Wichita County, Texas, by Edna Berner, Deputy.

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## PETITION FOR REMOVAL BY ROBERT W. PECKHAM.

96 Filed July 11, 1936.

(Title Omitted.)

To the Honorable Judge of said Court:

Now comes Robert W. Peckham, one of the defendants in the above entitled and numbered cause, and files this his petition for removal of said cause from the District Court of Wichita County, Texas, for the 30th Judicial District, wherein said cause is now pending, to the District Court of the United States for the Northern District of Texas, at Wichita Falls, and for grounds for said removal says:

I.

That the matter in dispute herein between your petitioner and the cross-complainants, Wichita Royalty Company, a joint stock association, and E. E. Scannell, its Trustee, exceeds the sum of $3,000, exclusive of interest and costs.

II.

That said suit is of a civil nature, in equity, and arises under the Constitution and laws of the United States, in that the same involves a Federal question and questions, as follows:

That the suit is brought against an alleged insolvent national banking association, The City National Bank of Wichita Falls, Texas, and E. A. Deaton, its Liquidating Agent, for the purpose of winding up the affairs of such bank and equitably distributing its assets among all of the creditors of said bank, and to declare as void certain alleged preferential transfers made to the directors and to the City National Bank in Wichita Falls, and
97 that said suit is brought under and by virtue of Section 91, Title 12, of the United States Code Annotated, of the laws of the United States of America, to declare void and to set aside certain alleged preferential transfers made by an alleged insolvent national banking association now in liquidation, the Liquidating Agent being a party to said suit.

That it is to declare a trust fund upon certain assets assigned by said bank while it was allegedly insolvent, reference being made to the third amended original answer, cross-action, and interpleader filed herein by the Wichita Royalty Company, a joint stock association, and E. E. Scanneli on June 18, 1936, and made a part hereof for all purposes, to show more particularly and accurately the nature of said cross-action and interpleader and which cross-action and interpleader so referred to and made a part hereof affirmatively shows that said suit is of a civil nature in equity, arising under the Constitution and laws of the United States.

III.

That The City National Bank of Wichita Falls, Texas, and other defendants have filed a petition for removal in said cause to the District Court of the United States for

the Northern District of Texas, at Wichita Falls, and this defendant adopts the allegations in said petition for removal as his own, reference being made to said petition for the grounds therein stated.

IV.

Your petitioner offers herewith a good and sufficient surety for his entering into the District Court of the United States for the Northern District of Texas, Wichita Falls Division, within thirty days from the filing
98 of this petition a copy of the Record of this suit, and for paying all costs that may be awarded by the District Court of the United States if said Court shall hold that this suit was wrongfully or improperly removed thereto.

Wherefore, your petitioner prays that said surety and bond be accepted; that the suit be removed to the District Court of the United States for the Northern District of Texas, at Wichita Falls, pursuant to the statutes of the United States in such case made and provided, and that no further proceedings may be had herein in this Court.

ROBERT W. PECKHAM.

The State of Texas,
County of Travis.

Robert W. Peckham, one of the petitioning defendants in the above cause, being duly sworn, deposes and says that he is one of the defendants in the above cause and has read the foregoing petition and knows its contents, and that the matters and things set forth in the foregoing petition are true and correct.

ROBERT W. PECKHAM.

Sworn to and subscribed before me, this 7th day of July, A. D. 1936.

JEWELL GANNAWAY,
(Seal) Notary Public, Travis County, Texas.

Indorsed: Number 24549-A, The City National Bank of Wichita Falls, Texas, vs. Wichita Royalty Company, et al. Petition for Removal. Filed July 11, 1936, R. L. Sanderford, District Clerk, Wichita County, Texas, by Edna Berner, Deputy.

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NOTICE OF INTENTION TO REMOVE OF ROBT. W. PECKHAM, ET AL.

99 Filed July 11, 1936.

(Title Omitted.)

To Wichita Royalty Company, a Joint Stock Association, and E. E. Scannell, Cross-Complainants, and Kilgore & Rogers, their Attorneys:

You and each of you will please take notice that on the 11th day of July, A. D. 1936, at 10:00 o'clock A. M., Robert W. Peckham and Mrs. Hazel D. Peckham, surviving wife of G. W. Peckham, deceased, for herself individually and as guardian of the person and estate of William Peckham and George Peckham, minors, defendants in the cross-action and interpleader filed herein by the Wichita Royalty Company, a joint stock association, and E. E. Scannell, trustee, will file in the above-named Court their respective petitions and bonds as required by law for the removal of said cause from the above-entitled Court to the District Court of the United States for the Northern District of Texas, Wichita Falls Division, and also their respective bonds, each in the sum of one thousand dollars ($1,000), given on such removal according to law and the requirements of the statutes in such cases made and provided, and copies of said petitions and bonds are herewith served and delivered, and upon the filing of said petitions and bonds the defendants aforesaid will pre-

sent and call to the attention of said District Court of Wichita County for the 30th Judicial District of Texas said respective petitions and bonds and move the said District Court of Wichita County, Texas, for an order of removal of said cause from said District Court of Wichita County, Texas, to the District Court of
100 the United States for the Northern District of Texas, at Wichita Falls, and the motion and petition for removal is upon the grounds as stated in said petition and upon said petition and bond so filed and presented.

HAZEL D. PECKHAM,
For herself individually and as guardian of the person and estate of George and William Peckham, minors.
ROBERT W. PECKHAM.
By LESLIE HUMPHREY, Attorney.

Receipt is acknowledged of a true copy of this notice, together with a copy of the petition and bond accompanying the same at 8:30 o'clock A. M., on this 11th day of July, A. D. 1936.

KILGORE & ROGERS,
By JOHN E. KILGORE,
Attorneys for Wichita Royalty Company and E. E. Scannell, Trustee.

Indorsed: Number 24549-A, The City National Bank of Wichita Falls, Texas, vs. Wichita Royalty Company. Notice of Removal. Filed July 11, 1936. R. L. Sanderford, District Clerk, Wichita County, Texas, by Edna Berner, Deputy.

## BOND FOR REMOVAL BY ROBERT W. PECKHAM.

101 Filed July 11, 1936.

(Title Omitted.)

Know all Men by these Presents: That the undersigned, Robert W. Peckham, as principal, and the other subscribers hereto, as sureties, are held and firmly bound unto the Wichita Royalty Company, a joint stock association operating under a declaration of trust, and E. E. Scannell, Trustee, plaintiffs in the cross-action and interpleader filed against the undersigned principal, in the sum of One Thousand ($1,000) Dollars, for the payment of which well and truly to be made unto the said Wichita Royalty Company, a joint stock association aforesaid, and E. E. Scannell, its Trustee, their successors and assigns, we do jointly and severally bind ourselves, our heirs, legal representatives, and assigns firmly by these presents.

The condition of the above bond is as follows: That whereas, the above bounden, Robert W. Peckham, has filed his petition in the District Court of Wichita County, Texas, for the removal to the District Court of the United States for the Northern District of Texas, at Wichita Falls, of the above cause, wherein the said Wichita Royalty Company, a joint stock association, and E. E. Scannell, its Trustee, are plaintiffs and this petitioner and others are defendants.

Now, Therefore, if the said Robert W. Peckham shall within thirty days from the date of the filing of said petition for removal enter in the said District Court of the United States a certified copy of the record in said cause,
and shall well and truly pay all costs that may
102 be awarded by said District Court of the United States if said Court shall hold that said cause

was wrongfully or improperly removed thereto, then this obligation shall be null and void; otherwise to remain in full force and effect.

Witness my hand, this 7th day of July, A. D. 1936.

ROBERT W. PECKHAM, Principal.

THE FIDELITY & CASUALTY COMPANY OF NEW YORK,

By GROVER C. BULLINGTON,

(Seal) Attorney. Surety.

The above and foregoing bond and the surety thereon is approved by me this the 11th day of July, A. D. 1936.

ALLAN D. MONTGOMERY,

Judge of the 30th District Court,

Wichita County, Texas.

Indorsed: Number 24549-A, The City National Bank of Wichita Falls, Texas, vs. Wichita Royalty Company. Bond for Removal. Filed July 11, 1936, R. L. Sanderford, District Clerk, Wichita County, Texas. By Edna Berner, Deputy.

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PETITION FOR REMOVAL OF HAZEL D. PECKHAM, ET AL.

103 Filed July 11, 1936.

(Title Omitted.)

To the Honorable Judge of said Court:

Now comes Hazel D. Peckham, the surviving wife of G. W. Peckham, deceased, for herself individually and as guardian of the person and estate of William Peckham and George Peckham, minors, citizens and residents of the city of Colorado Springs, State of Colorado, and, limiting this appearance herein solely for the purpose of

presenting a petition for removal of said cause from the District Court of Wichita County, Texas, for the 30th Judicial District to the District Court of the United States for the Northern District of Texas, Wichita Falls Division, and for no other purpose, file this their petition for removal of said cause from said District Court of Wichita County, for the 30th Judicial District of Texas, wherein said cause is now pending, to the District Court of the United States for the Northern District of Texas, Wichita Falls Division, to be held in the city of Wichita Falls in said district and state, and respectfully shows the Court as grounds for said removal as follows:

I.

That the petitioner herein is the surviving wife of G. W. Peckham, deceased, and the guardian of the person and estate of William Peckham and George Peckham, both minors, acting under an appointment of the County Court of Wichita County, Texas, and the said petitioner, Hazel D. Peckham, is the mother of said minors and their natural guardian.

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II.

That the matter in dispute herein between your petitioners and the cross-complainants, Wichita Royalty Company, a joint stock association, and E. E. Scannell, its trustee, exceeds the sum of $3,000, exclusive of interest and costs, and is the sum of $200,000, and that said suit is of a civil nature and in equity, and in said suit there is a controversy which is wholly between citizens of different states, that is to say, the controversy is between the Wichita Royalty Company, a joint stock association, and E. E. Scannell, its trustee, on the one hand, as plaintiffs in said cross-action, who are citizens and residents of the State of Texas, and a controversy between these petitioning defendants, Hazel D. Peckham, for herself in-

dividually and as guardian of the person and estate of William Peckham and George Peckham, all of whom are citizens and residents of a different state from that of the plaintiffs in said cross-action, to-wit, State of Colorado, and the City of Colorado Springs, and that said controversy as between these petitioning defendants and the said plaintiffs in said cross-action, Wichita Royalty Company, a joint stock association, and E. E. Scannell, its trustee, can be fully determined as to them alone and the controversy as to the other defendants is a separable controversy, and which controversy as between these petitioning defendants and the said Wichita Royalty Company, a joint stock association, and E. E. Scannell, is of the following nature, that is, whether these petitioning defendants are liable to said plaintiffs for funds allegedly wrongfully converted by G. W. Peckham during his lifetime belonging to the said Wichita Royalty Company, a joint stock association, during the time and period that he was trustee therein, and whether or not this
105 defendant, Hazel D. Peckham, as his surviving wife, and her minor children, as his surviving sons, are legally liable to account for such alleged sums from funds received by them out of the estate of G. W. Peckham, deceased, and that, as aforesaid, said issue presents a separable controversy from that asserted by the plaintiffs in said cross-action, viz., Wichita Royalty Company, a joint stock association, and E. E. Scannell, its trustee, as to the other defendants in said cross-petition.

III.

That the above entitled action, cross-petition, and interpleader aforesaid is of a civil nature and in equity, and is a suit which arises under the Constitution and laws of the United States and involves a Federal question and questions, as follows:

That it is a suit commenced against a national banking association, namely, The City National Bank of Wichita

Falls, Texas, and E. A. Deaton, its Liquidating Agent, as well as J. T. Harrell, its alleged trustee, and for the winding up of the affairs of such bank and to equitably distribute its assets among all of its creditors, as is apparent from said cross-petition and interpleader filed herein.

That it is a suit to declare void as a preference the transfer of certain assets by the City National Bank of Wichita Falls, Texas, a national banking association, to the City National Bank in Wichita Falls, also a national banking association, and certain directors of said bank, the petition and cross-action alleging the insolvency of the transferror bank.

106 That the rights upon which said suit and action is based are created and determined by the laws of the United States and Section 91, Title 12, United States Code Annotated, is specifically pleaded by the plaintiffs in said cross-action as grounds for declaring void certain allegedly preferential transfers made by The City National Bank of Wichita Falls, Texas, and said suit seeks to set aside such preferential transfers under Section 91, Title 12, aforesaid.

That the suit is against E. A. Deaton, the Liquidating Agent of a national bank created and organized under the laws of the United States, which liquidating agent receives his powers and is subject to the liabilities created by the laws of the United States.

Reference is here made to the third amended original answer, cross-action, and interpleader filed herein by the Wichita Royalty Company, a joint stock association, and E. E. Scannell on June 18, A. D. 1936, and made a part hereof for all purposes, to show more particularly and accurately the nature of said cross-action and interpleader, and which cross-action and interpleader so referred to and made a part hereof affirmatively shows that

this is a suit of a civil nature, in equity, arising under the Constitution and laws of the United States.

IV.

These petitioning defendants adopt the petition filed herein for removal of this cause by The City National Bank of Wichita Falls, Texas, and other defendants, as her own and reference is made to said petition and the grounds thereof for all purposes.

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V.

Your petitioners offer herewith a good and sufficient surety for their entering into the District Court of the United States for the Northern District of Texas, Wichita Falls Division, within thirty days from the filing of this petition a copy of the Record of this suit, and for paying all costs that may be awarded by the District Court of the United States if said Court shall hold that this suit was wrongfully or improperly removed thereto.

Wherefore, your petitioners pray that said surety and bond be accepted; that the suit be removed to the District Court of the United States for the Northern District of Texas, at Wichita Falls, pursuant to the statutes of the United States in such case made and provided, and that no further proceedings may be had herein in this Court.

HAZEL D. PECKHAM,
MRS. H. P.,
For herself and as guardian for her minor sons, George and William Peckham.

State of Colorado,
County of El Paso.

Hazel D. Peckham, one of the petitioning defendants in the above cause, being duly sworn, deposes and says

that she is one of the defendants in the above cause and has read the foregoing petition and knows its contents, and that the matters and things set forth in the foregoing petition are true and correct, and that she has executed and subscribed to the same for herself and as guardian for her minor sons, George Peckham and William Peckham.

HAZEL D. PECKHAM,
MRS. H. P.,
For herself individually and as Guardian for William and George Peckham, Minors.

Sworn to and subscribed before me, this 8th day of July, A. D. 1936.

HATTIE M. WENZEL,
(Seal) Notary Public, El Paso County, Colorado.

My commission expires January 12, 1936.

108 Indorsed: Number 24549-A, The City National Bank of Wichita Falls, Texas, vs. Wichita Royalty Company, et al. Petition for Removal. Filed July 11, 1936. R. L. Sanderford, District Clerk, Wichita County, Texas, by Edna Berner, Deputy.

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109 BOND FOR REMOVAL BY HAZEL D. PECKHAM, ET AL.

Filed July 11, 1936.

(Title Omitted.)

Know All Men By These Presents: That the undersigned, Hazel D. Peckham, surviving wife of G. W. Peck-

ham, deceased, for herself and as guardian for George Peckham and William Peckham, minor sons of G. W. Peckham, deceased, as principals, and the other subscribers hereto, as sureties, are held and firmly bound unto the Wichita Royalty Company, a joint stock association operating under a declaration of trust, and E. E. Scannell, Trustee, plaintiffs in the cross-action and interpleader filed against the undersigned principal, in the sum of One Thousand ($1,000) Dollars, for the payment of which well and truly to be made unto the said Wichita Royalty Company, a joint stock association aforesaid, and E. E. Scannell, its Trustee, their successors and assigns, we do jointly and severally bind ourselves, our heirs, legal representatives, and assigns firmly by these presents.

The condition of the above bond is as follows: That, whereas, the above bounden, Hazel D. Peckham, for herself and as guardian aforesaid, has filed her petition in the District Court of Wichita County, Texas, for the removal to the District Court of the United States for the Northern District of Texas, at Wichita Falls, of the above cause, wherein the said Wichita Royalty Company, a joint stock association, and E. E. Scannell, its Trustee, are plaintiffs and this petitioner and others are defendants:

110 Now, therefore, if the said Hazel D. Peckham, for herself individually and as guardian for said minors, George Peckham and William Peckham, shall within thirty days from the date of the filing of said petition for removal enter in the said District Court of the United States a certified copy of the record in said cause, and shall well and truly pay all costs that may be awarded by said District Court of the United States if said Court shall hold that said cause was wrongfully or improperly removed thereto, then this obligation shall be null and void; otherwise to remain in full force and effect.

Witness My Hand, this 7th day of July, A 36.

HAZEL D. PECKHAM and MRS. H. P.,
For herself individually and as Guardian for George and William Peckham, Minors,
Principal.

(Seal) THE FIDELITY & CASUALTY COMPANY OF NEW YORK,
By GROVER C. BULLINGTON,
Attorney; Surety.

The above and foregoing bond and the surety thereon is approved by me this the 11 day of July, A. D. 1936.

ALLAN D. MONTGOMERY,
Judge of the 30th District Court,
Wichita County, Texas.

Indorsed: Number 24549-A, The City National Bank of Wichita Falls, Texas, vs. Wichita Royalty Company, et al. Bond for Removal. Filed: July 11, 1936. R. L. Sanderford, District Clerk, Wichita County, Texas, by Edna Berner, Deputy.

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111 ORIGINAL PLEA TO FEDERAL JURISDICTION AND MOTION TO REMAND.

Filed November 16, 1936.

In the District Court of the United States for the Northern District of Texas, Wichita Falls Division.

City National Bank, et al.,
vs. No. 538 Eq.
Wichita Royalty Company.

Appearing only for the purpose of pleading to the jurisdiction of this Court, for motion to remand, and for such

other purposes as hereinafter shown, but only for such purposes, come now Wichita Royalty Company and E. E. Scannell, its trustee, herein called Cross-complainants, and would respectfully show:

1. That this suit was instituted in the District Court of Wichita County, Texas, with cross-action filed and other parties therein impleaded in 1931. As affirmatively appears upon the face of the record, the suit at the time of its removal had joined at issue many separate causes of action, a proceeding permissible under the blended system of Texas practice in the absence of pleas in abatement, some of which separate causes of action are as follows:

a. Plaintiff sues Cross-complainants upon a promissory note;

b. Plaintiff bank sues Chas. L. Black, E. E. Scannell, Guy Rogers and Wichita Royalty Company to invalidate liens given to secure Chas. L. Black and Guy Rogers in the payment of money by Wichita Royalty Company, and for an accounting, a controversy first filed and still pending in another Court, with cross-action filed and affirmative relief sought therein and with a motion to strike herefrom plaintiffs' suits thereon as in abatement;

112 c. Plaintiff bank and Cross-complainants sue The Texas Comany for the proceeds of minerals run to the credit of Wichita Royalty Company;

d. Plaintiff bank and Cross-complainants sue the Humble Oil & Refining Company for the proceeds of minerals run to the Credit of Wichita Royalty Company;

e. Plaintiff bank and Cross-complainants sue the Continental Oil Company for the proceeds of minerals run to the Credit of Wichita Royalty Company;

f. Plaintiff bank sues for the title and possession of real property, record title to which stands in the name of Wichita Royalty Company as to a part, and in the name of G. W. Peckham as to the remainder;

g. Cross-complainants sue City National Bank of Wichita Falls, herein called the old bank, for its deposit balance;

h. Cross-complainants sue said old bank for wrongful participation with G. W. Peckham in his breaches of trust;

i. Cross-complainants sue said old bank for being unjustly enriched to the extent that trust funds were received by it to apply upon the personal debt of Peckham and others;

j. Cross-complainants sue J. T. Harrell for wrongful participation with G. W. Peckham in breaches of trust;

k. Cross-complainants sue J. T. Harrell for being unjustly enriched to the extent that trust funds were paid to him or in discharge of his debt;

l. Cross-complainants sue the administrator and heirs of G. W. Peckham for an accounting as to transactions had by G. W. Peckham in his lifetime;

m. Cross-complainants sue the administrator and heirs of G. W. Peckham for title to and possession of certain mineral estates;
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n. Cross-complainants sue to avoid the transactions had by G. W. Peckham in his dual capacity as an individual and as trustee;

o. Cross-complainants sue The City National Bank in Wichita Falls, herein called the new bank, to set aside

the transfer and mortgage of assets by the insolvent old bank to the new incorporating bank;

p. Cross-complainants sue the new bank upon its assumption of the debts of the old bank;

q. Cross-complainants sue the individual directors of both the old and the new banks for their receiving preferences as creditors of the insolvent old bank whose affairs they managed and much of whose assets were used for their benefit when such bank so directed by them was both insolvent and in contemplation of insolvency.

2. Thus it appears upon the record and as a fact that there are many separate and distinct causes of action by and between separate and distinct groups of parties, some being actions at law, with others seeking equity relief, without this Court's potential jurisdiction to hear and determine many, if not all of such causes of action.

3. That the controversy herein between the old bank and Wichita Royalty Company, as well as the controversy between Wichita Royalty Company and J. T. Harrell as to transactions subsequent to October 1, 1925, were pleaded to and tried in the State District Court in 1932, with judgment rendered and appeal taken and the cause remanded by the Supreme Court of Texas with instruction to proceed to judgment in accordance with the opinion filed, with respect to which matters and such causes of action herein asserted by Wichita Royalty Company against the old bank and against J. T. Harrell, the petition for removal was not filed in the time and
114 manner required by law and as to which any existing right said parties may have had to remove the cause was lost by proceedings had in the State Court both with respect to the cause of action asserted by the old bank against Wichita Royalty Company and the cross-action asserted by Wichita Royalty Company against the old bank, as well as that asserted against J. T.

Harrell by Wichita Royalty Company. Said old bank and J. T. Harrell having invoked the jurisdiction of the State Court to hear and determine the matters thus raised at issue and the law of the case having been fixed and determined, are estopped and cut off from any right to remove after an adverse decision by the highest State Court to which the cause could be appealed.

4. That neither the cause of action asserted by the old bank against Cross-complainants, nor the cause of action asserted by Cross-complainants against the old bank, nor that asserted by Cross-complainants against J. T. Harrell, nor that asserted by Cross-complainants against the new bank, nor that asserted against the individual directors of the old bank, nor that asserted by either party hereto against all or either of the other parties, really and substantially involved a controversy or dispute properly within the jurisdiction of the National Court; and for want of jurisdiction the Court should, sui sponti, remand the cause and each cause of action asserted therein to the State Court whence it was remanded.

5. That there is no dispute and no controversy as to the construction of the National Constitution, the acts of Congress, or treaties, and no federal question is otherwise involved. The dispute is as to facts and not as to construction of a federal law. While Section 91, Title 12, United States Code Annotated, is referred to in Cross-complainants pleading, yet there is and can be no dispute as to the meaning of said provision, it being susceptible of but one construction and that having been given by the Supreme Court of the United States. There being no dispute as to the construction of any federal law and the dispute being limited to one of fact, there is no such federal question as to give this Court jurisdiction or to support the petitions for removal.

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6. While the old bank and its liquidating agent are such, yet the suit against the old bank, though insolvent,

is not removable as such; and since no receiver or other officer of the United States is in charge of the old bank and no suit is brought against any such officer but only against the bank and an agent of its own voluntary selection, such cause of action is not removable.

7. The old bank's asserted causes of action against the several parties hereto are not removable, in that under the removal statutes only a defendant and not a plaintiff may remove.

8. The removal petition of the old bank does not purport to seek removal of its causes of action herein asserted against the several parties, simply seeking the removal of that raised by cross-complainants in their amended pleading. This Court's jurisdiction has never attached to the plaintiffs causes of action, which should be noted of record so that the parties may proceed to judgment in the State Court without record question as to jurisdiction but in respect of adjudicated jurisdiction.

9. The respective pleading of the several parties are referred to and made a part hereof as though copied herein.

10. Though Cross-complainants' suit be construed to be one to wind up the affairs of a national bank and therefore finding jurisdictional support had same been originally filed herein, yet such cause of action as such is not one arising under the Constitution, laws or treaties of the United States, as defined by the removal statute, but rather is an "other suit" of which the Court has potential jurisdiction as an original suit but which, when filed in the State Court, can be remanded "by the de-
116 fendant or defendants therein, being non-residents of that state." Even then, should it be determined to be a suit to wind up the bank, there is a want of diversity of citizenship to exclude it from those cases removable under the statute. Section 24 of the Judicial

Code gives the District Court original jurisdiction of specified causes of action. One of these is an action to wind up the affairs of a national bank. Such an action, however, is not one involving a federal question under the removal statute. It is one of those other actions which may be removed by a citizen of another state and by no one else.

11. That neither The Texas Company nor the Continental Oil Company nor the Humble Oil & Refining Company, nor William Peckham and/or George Peckham, minors, through their guardian with authority and under the direction of the Probate Court, has filed a petition and bound for removal, nor has any defendant sued by the old bank filed a petition for removal of plaintiffs' cause of action and the time has long since expired in which either party may file his petition and bond for such removal, said defendants so sued by the old bank being Chas. L. Black, Guy Rogers individually and as trustee, E. E. Scannell individually and as trustee, Wichita Royalty Company and W. H. Peckham, administrator of the Estate of G. W. Peckham, deceased, together with the oil companies above named, said individuals each being a resident of the State of Texas, and said corporate defendants being Texas corporations.

12. That Cross-complainants' suit against the administrators and heirs of G. W. Peckham, deceased, does not involve a controversy separable as between them, the same being joint and each being a necessary party to the relief sought. W. H. Peckham, said administrator, being a resident citizen of Texas, and Robert Peckham being a citizen of Texas when the cause of action was filed against him and Hazel D. Peckham, and each being a necessary party hereto, said cause of action is not removable upon the petition of Hazel D. Peckham, a non-resident of the State, and who is not shown to have complied and in fact has not complied with the requirements of Chapter 13, Title 69, Revised Civil

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Statutes of Texas, and had no authority as guardian to petition for removal, no permissive order having been entered by any Probate Court.

13. That W. H. Peckham, as administrator of the Estate of G. W. Peckham, deceased, did not petition for the removable of said cause under the direction and with the authority of the Probate Court of Wichita County, Texas, wherein he was appointed by the administrator, and which Court alone had the authority to authorize the filing of the petition for removal.

14. That Texas Investment Company is a dissolved corporation capable of being sued as such but without power to petition for removal except upon the joinder in the petition by each member of the last Board of Directors of such corporation as trustee for the creditors and stockholders thereof, and no such member of said Board of Directors has petitioned for the removal of said cause as to said dissolved corporation and the time has expired in which such a petition and bond could be filed.

15. That the several causes of action herein asserted by the old bank are each wanting in equity, and for the lack thereof should be dismissed, for which prayer is made.

Wherefore, the following alternative prayers are made, each subject and without prejudice to the prayer or prayers that precede it in the order designated as follows:

1. That this case in its entirety be remanded to the 30th District Court of Wichita County, Texas, whence it was removed;

2. That each and every separate cause of action herein asserted by either party hereto be remanded to said 30th

District Court of Wichita County, Texas, prayer being made for remand of all causes of action severally;

118 3. That as to each cause of action, if any, of which this Court retains jurisdiction, the Court determine and declare the nature thereof, whether cognizable at law or in equity, retaining such, if any, causes of action properly removed and that is equitable in nature upon the equity docket, and transferring to the law docket such causes of action, if any, properly removed to this Court that are actions at law.

4. That the Court enter such other and further orders as in law and equity will redound to an effective adjudication of the several matters raised by the pleading herein, including the granting of permission and the entry of an order requiring the re-casting of pleadings by the several parties.

Respectfully submitted,
GUY ROGERS,
Attorney for Wichita Royalty Company and E. E. Scannell.

The State of Texas,
County of Wichita.

E. E: Scannell, being duly sworn, on oath says that he has read the above plea and motion and the facts therein stated are true.

E. E. SCANNELL.

Sworn to and subscribed before me this 16th day of November, A. D. 1936.

GRACE JARNAGAN,
(Seal) Notary Public, Wichita County, Texas.

119 ORDER OVERRULING PLEA TO JURISDICTION AND MOTION TO REMAND.

Filed and Entered December 3, A. D. 1936.

(Title Omitted.)

This day came on to be heard the motion filed herein by the cross-complainants, Wichita Royalty Company and E. E. Scannell, its Trustee, to remand this cause to the District Court of Wichita County for the 30th Judicial District of Texas, and the cross-complainants, Wichita Royalty Company and E. E. Scannell, its Trustee, appeared by Guy Rogers, their attorney, and also came the interpleaded defendants, City National Bank of Wichita Falls, Texas, a corporation; City National Bank in Wichita Falls, Texas, a corporation; J. T. Harrell, individually and as Trustee of the City National Bank of Wichita Falls, Texas; Texas Investment Company, a corporation; E. A. Deaton, Liquidating Agent of the City National Bank of Wichita Falls, Texas; L. H. Cullum, Leslie Humphrey, Tarlton Morrow, Jack Jeffus, Oral Jones, Frank Kell, Joe Kell, J. J. Perkins, C. W. Snider, and F. P. Timberlake, interpleaded defendants in the cross-action of the
120 Wichita Royalty Company and E. E. Scannell, its Trustee, by and through their respective attorneys, T. R. Boone, Tarlton Morrow, and Leslie Humphrey, and also came W. H. Peckham, Administrator of the Estate of G. W. Peckham, Deceased, Mrs. Hazel D. Peckham, for herself and as Guardian of William Peckham and George Peckham, minors, and Robert W. Peckham, through their attorney, Arch Dawson, and said motion to remand being argued and submitted to the Court, and the Court, having duly considered the same and being fully advised in the premises, does now order that said motion be and it is hereby overruled.

The cross-complainants, Wichita Royalty Company and E. E. Scannell, its Trustee, excepted to said order over-

ruling said motion to remand, which exception is allowed and entered.

It is Further Ordered that the Wichita Royalty Company and E. E. Scannell, its Trustee, are granted ten (10) days from the date hereof in which to recast their pleadings and they shall file within said time such pleadings, as recasted; that the other parties hereto, plaintiff and interpleaded defendants, are granted ten (10) days thereafter in which to plead, answer, and reply to the pleadings as recasted by the cross-complainants, Wichita Royalty Company and E. E. Scannell, its Trustee.

It is Further Ordered and Decreed by the Court that the interpleaded defendants, The Texas Company, Humble Oil & Refining Company, and Continental Oil Company, may have thirty (30) days from and after the filing of the recasted pleadings by the Wichita Royalty Company and E. E. Scannell, its Trustee, within which to make answer thereto, and it is so decreed.

WM. H. ATWELL,
United States District Judge.

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121 CITY NATIONAL BANK'S REPLEADED BILL OF COMPLAINT.

Filed in U. S. District Court, December 21, 1936.

(Title Omitted.)

To the Honorable William H. Atwell, Judge of Said Court:

The City National Bank of Wichita Falls, Texas, a national banking association duly incorporated, but now in liquidation, and E. A. Deaton, Liquidating Agent of said bank, hereinafter styled Complainants, and pursuant to an order granting them the right to replead, file this their

bill of complaint, repleading their cause of action set forth in their second amended original petition, complaining of the Wichita Royalty Company, a common-law trust, whose sole trustee is E. E. Scannell, E. E. Scannell, individually, and also complaining of Guy Rogers, individually and as trustee under the will of L. B. Rogers, deceased, Charles L. Black, W. H. Peckham, administrator of the estate of G. W. Peckham, deceased, Humble Oil & Refining Company, a corporation, Continental Oil Company, a corporation, and The Texas Company, a corporation, all hereinafter styled respondents, and with
*122 respect show to the Court:

I.

That the complainant City National Bank of Wichita Falls, Texas, is a national banking association in liquidation; that it is a citizen and resident of Wichita County, and State of Texas; that E. A. Deaton is its Liquidating Agent, duly appointed as such, and likewise a citizen and resident of Wichita County, Texas; that the Wichita Royalty Company, respondent herein, is a common-law trust, acting pursuant to a declaration of trust filed for record in Wichita County, Texas, whose sole trustee is E. E. Scannell, a resident and citizen of Wichita County, Texas; that E. E. Scannell, individually, likewise is a resident and citizen of Wichita County, Texas; that Guy Rogers is a citizen and resident of Wichita County, Texas, and is trustee under the will of L. B. Rogers, deceased; that Charles L. Black is a citizen and resident of Travis County, Texas; that W. H. Peckham is the administrator of the estate of G. W. Peckham, deceased, appointed as such by the Probate Court of Wichita County, Texas, and is a citizen and resident of Wichita County, Texas; that the Humble Oil & Refining Company, the Continental Oil Company, and The Texas Company are each corporations duly incorporated and are oil purchasing companies, all residing and having a place of business in the

County of Wichita, and State of Texas, and each being incorporated under the laws of the State of Delaware and therefore citizens of such state, but each being licensed and permitted to transact business in the State of Texas.

II.

That this Honorable Court has jurisdiction to hear and determine this controversy, in that the complainant City National Bank of Wichita Falls, Texas, is a national banking association, now in liquidation pursuant to
123 the statutes of the United States of America and the resolution of the stockholders and directors made in accordance therewith; that E. A. Deaton is the Liquidating Agent of said bank, duly appointed in accordance with and pursuant to the statutes of the United States of America and resolutions of the directors and stockholders of said bank legally made appointing the said E. A. Deaton as such Liquidating Agent, and this a suit for winding up the affairs of the City National Bank of Wichita Falls, Texas.

That this suit also is a suit of a civil nature in equity arising under the Constitution and laws of the United States, of which the District Courts of the United States are given original jurisdiction in this to-wit: That it is a suit bottomed upon and which involves the construction of Section 91, Title 12, of the United States Code Annotated, with reference to the validity of a transfer of notes, bonds, bills of exchange, and other evidences of debt owing to the complainant herein, City National Bank of Wichita Falls, and of deposits to its credit and all assignments of mortgages and sureties on real estate and deposits of money heretofore made by the complainant City National Bank of Wichita Falls, Texas, to the interpleaded defendant City National Bank in Wichita Falls, made such in the cross-action of the Wichita Royalty Company against the City National Bank in Wichita Falls,

pursuant to a contract and assignment dated the 15th day of March, A. D. 1933, executed by the City National Bank of Wichita Falls, complainant herein, and the City National Bank in Wichita Falls, interpleaded defendant in the cross-action of the cross-complainant, Wichita Royalty Company, such jurisdiction more fully appearing from the facts hereinafter pleaded.

124 III.

Complainants say that the Wichita Royalty Company is a form of an association commonly known as a Massachusetts or common-law trust; that the sole management and control of the same is vested under the articles of association and declaration of trust in one trustee, who at present is E. E. Scannell and who has since his appointment, to-wit, on the 12th day of November, A. D. 1929, been handling exclusively as such trustee the affairs of the said respondent.

Complainants are informed that there are certain certificate holders, but allege that none of them reside in the State of Texas where process can reach them, and that no judgment can be enforced against the certificate holders for the collection of any indebtedness due the complainants.

IV.

That on the 26th day of June, A. D. 1930, the respondent Wichita Royalty Company, through E. E. Scannell, its trustee, and for a valuable consideration, made, executed, and delivered to the complainant City National Bank of Wichita Falls a certain promissory note of the Wichita Royalty Company in the principal sum of $22,000, which note was due sixty days after date and payable to the order of the complainant bank, with interest thereon from date until paid at the rate of 8% per annum, which note

provides also for 10% additional upon the principal and interest as attorney's fees if sued upon or placed in the hands of an attorney for collection; that this note is in extension and renewal of an obligation theretofore owing by the respondent Wichita Royalty Company to the complainant bank for money borrowed at the time G. W. Peckham was sole trustee of said company and at a time when E. E. Scannell was the secretary and treasurer, and complainants herein allege and say that said note has never been paid and that it is a valid debt and obligation of the Wichita Royalty Company and its trustee to the complainant herein, and that said note, together
125 with interest and attorney's fees accruing thereon, aggregates at this time the sum of $40,000.

That, in addition to the above indebtedness, complainants allege that the respondent Wichita Royalty Company is further indebted to the complainant bank and its Liquidating Agent upon the unpaid balance of a promissory note dated June 9, 1930, executed by the Texas Investment Company, a corporation, and payable to the order of the complainant, which note was originally for the principal sum of $43,000 and was due on demand, and bearing interest at the rate of 8% per annum and for attorney's fees, and which note was duly and legally indorsed by the Wichita Royalty Company, by E. E. Scannell, trustee, and also by J. T. Harrell and J. A. Kemp; that said note at the time of its execution was secured with a pledge of certain collateral securities, which, pursuant to the terms of said note, were sold on December 29, 1930, leaving a deficiency or balance of $29,192, including interest and attorney's fees, and that the relative liability of the indorsers on said note for such deficiency was one-half to the Wichita Royalty Company and one-half to J. T. Harrell and J. A. Kemp, jointly, and that the respondent Wichita Royalty Company and E. E. Scannell, its trustee, is therefore indebted to the plaintiff for one-half of such deficiency, or the sum of $14,596, and interest thereon at 8% from December 29, 1930.

That both of said notes, as hereinabove alleged, are unpaid and due demand has been made upon the respondent Wichita Royalty Company for the payment of same, and such demand has been refused and complainants sue for the aggregate amount of the principal, interest, and attorney's fees due on said notes, aggregating $60,000.

126 V.

Complainants say that the Wichita Royalty Company, respondent herein, does not have sufficient assets and has not had sufficient assets since the maturity of said notes with which to pay the same in full, but that it does have substantial assets sufficient to pay substantially said notes; that, inasmuch as none of the shareholders are subject to the process of this Court, that is, being nonresidents of Texas (unless it be Scannell), the complainants must look alone to the properties of said trust for the satisfaction of the debts owing to it by the said Wichita Royalty Company.

VI.

The declaration of trust, which is duly recorded in Volume ...., Page ...., of the Deed Records of Wichita County, Texas, to which reference is here made, creates a trust for the benefit of the creditors of the Wichita Royalty Company upon the assets of same and which provides as follows:

(A) That the trustee (who is E. E. Scannell) shall hold all of the funds and properties in trust for the purposes and with the powers and limitations set out in the declaration of trust;

(B) It provides for the management of the affairs of said association or trust by one trustee, giving him exclusive power and authority in such management, and provides that all title acquired shall be held in trust by such trustee in his capacity as such;

(C) That any debt incurred by the trustee shall be a charge on the property of the trust in preference to the claim, or claims, of any stockholder as such and that all of the funds and properties of the trust of every character shall stand primarily charged with the burden of paying any claim or money demand established or existing on account of the operations and business of said trust, whether founded on contract or tort, to the end that the stockholders may be protected from personal liability on account thereof;

(D) That said articles of association contained other provisions. It provided for a capital stock of one million dollars; that certificates of beneficial ownership should be issued to shareholders and that the assets of said association should be impressed with a trust and lien for the payment of all the obligations of said trust estate.
127 It contained other provisions, the effect of which was to create for the benefit of the creditors of said association ratably and alike, especially in case of insolvency, a trust fund upon all of the assets of said association and it was therefore the duty of the trustee administering said assets to treat the same as a trust fund for the benefit of all the creditors of said association ratably and alike, and to suffer no preferential transfers or payments, a violation of which duty would be an act of bad faith on the part of the trustee.

That the indebtedness herein sued for is an indebtedness incurred by the trustee in the management and conduct of the business of said trust and pursuant to the terms of the articles of association aforesaid.

VII.

These complainants further allege that since the filing of this suit the trustee, E. E. Scannell, has diverted the properties and the proceeds therefrom in an effort to defeat an ultimate liability upon this indebtedness and for

purposes not authorized by the trust; that the properties owned by the respondent Wichita Royalty Company are producing oil royalties in the main and that the income and receipts therefrom should have been applied to the payment of this indebtedness, or at least kept subject to the payment thereof in the event it should be finally determined that said respondent is so indebted to the complainants, but the complainants say that said trustee, E. E. Scannell, has so used said funds and the income therefrom as to hinder, delay, and defraud the complainants, in that the assets and monies realized from the same by the respondent Wichita Royalty Company will not be forthcoming or available for the satisfaction of complainants' indebtedness herein should it be finally determined that the respondent Wichita Royalty Company is so indebted.

128 VIII.

That at the time of the execution of said notes and the filing of the suit thereon, the Wichita Royalty Company owned valuable royalties, some of which were located and situated in the State of Oklahoma and are described as follows:

In Okmulgee County.

1st—An undivided 1/8th overriding royalty interest in the oil, gas, and minerals on the South 1/2 of the S. W. 1/4 of Sec. 34, Township 12 North, Range 12 East, known as the Ellis Holmes Farm in said county, fully described in an instrument dated November 18, 1922, executed by B. L. Fain in favor of First Party herein, which instrument was filed for record Sept. 18, 1924, at one o'clock p. m. and recorded in the Misc. Records at pages 404-5 of Vol. 2 of the Records of said Okmulgee County, reference to which is made for all purposes.

2nd.—An undivided ¼ of the ⅛th royalty on the South ½ of the Southwest ¼th of Sec. 34, Township 12 N., Range 12 E., known as the Ellis Holmes Farm, said interest being fully described in an instrument executed by W. H. Peckham in favor of First Party herein on the 4th day of April, 1923, recorded in Book M 259, Page 261, of the Records of said Okmulgee County, reference to which is made for all purposes.

3rd—19/40ths of the ⅛ royalty on the North ½ of the S. W. ¼ of Sec. 34, Township 12 North, Range 12 E.; known as the Ellis Holmes Farm in said county, said interest being fully described in an instrument dated August 1, 1923, executed by W. H. Peckham in favor of First Party herein, which instrument is duly recorded in Book M 259 at Page 262 of the Records of said County, reference to which is made for all purposes.

In Noble County.

4th—5/32nds of the ⅛th royalty on the N. W. ¼ of the S. E. ¼th of Sec. 10, Township 24 North, Range 1, West in said county, said interest being fully described in Vol. M-20, at page 466, and in Vol. 20 at 344 and Vol. M-20 at 462 of the Records of said Noble County, reference to which is made for all purposes.

5th. 2/7ths of the ⅛th fee royalty on the N. W. ¼th of Sec. 15, Township 24 N., Range 1 W., known as the J. W. See farm in said County, said interest being fully described in instruments recorded in Vol. M-20 at page 349 and in Vol. M-20 at page 464 of the Records of said County respectively, reference to which is made for all purposes.

6th—1/256th of the ⅛ fee royalty on lots 1 and 2 and the south ½ of the northeast ¼ Sec. 3, Township 24 N. Range 1 W. known as the J. Carmichael Farm
129 in said county, which interest is fully described in an instrument recorded in Vol. M-24 at page 10

of the Records of said county, reference to which is made for all purposes.

In Kay County.

7th—1/320th of the 1/8th fee royalty on the N. W. 1/4 of Sec. 34, Township 25 N. Range 1 W. in said county known as the Fred A. Beverlin Farm, said interest being fully described in instruments recorded in Vol. 97 at page 257 of the Records of said County, reference to which is made for all purposes.

8th—3/640ths of the 1/8th fee royalty on the east 1/2 of the Northeast 1/4 Sec. 34, Township 25 N. Range 1 W., known as the W. F. McDaniel farm in said county, which interest is fully described in an instrument recorded in Vol. 97 at page 257 of the Records of said county, reference to which is made for all purposes.

9th—1/64th of the 1/8th fee royalty on the west 1/2 of the N. E. 1/4 of Sec. 34, Township 25 N., Range 1 W., known as the C. W. Goltry farm in said county, which interest is fully described in instruments recorded in Vol. 97 at page 257 of the records of said county, reference to which is made for all purposes.

together with all the improvements thereon and appurtenances thereto belonging.

That said royalties were and are of the reasonable value of at least $5,000; that, in addition to receiving the income and revenues therefrom, the said E. E. Scannell, acting together with the respondent Guy Rogers, have mortgaged said Oklahoma royalties to Guy Rogers and have transferred the income therefrom to the said Guy Rogers, as shown by a transfer and mortgage marked Exhibit "A" and made a part of this petition.

That the respondent Wichita Royalty Company also owned other valuable royalties located in the State of Texas, an itemized list and description thereof being attached hereto, marked Exhibit "B," and made a part hereof.

IX.

That after the execution of the mortgage upon the Oklahoma properties, the respondent Wichita Royalty Company, acting through E. E. Scannell and pursu-
130 ant to a plan to defeat the ultimate payment of this liability, executed a deed of trust upon all of the remainder of the royalties and assets owned by the Wichita Royalty Company, situated in the Counties of Archer, Young, Gray, and Wheeler, State of Texas, which properties were substantially the major portion in value of all the remaining assets of the Wichita Royalty Company, and at the same time the said Wichita Royalty Company delivered to its attorney, Guy Rogers, a transfer and assignment of all the oil and gas and proceeds thereof produced from said properties; that the mortgage upon the Oklahoma properties and the deed of trust and oil assignment upon the properties in Texas purported to secure Guy Rogers in certain monies advanced and Charles L. Black in the payment of an attorney's fee for services on appeal in the case of City National Bank v. Wichita Royalty Company in the sum of $5,000; that the indebtedness secured by the assignment and mortgage upon the Oklahoma properties, shown in Exhibit "A," was to secure the sum of $2,500 and such other advancements as he might make, and in this connection the complainants say that the sums secured by the mortgages and deeds of trust aforesaid were greatly less than the actual value of the properties pledged and transferred.

X.

That subsequent to the execution of said deed of trust on the Texas properties and on the 7th day of August, 1934, the trustee appointed in said deed of trust, acting

pursuant to instructions from Guy Rogers, attorney, purported to sell all of the above described royalties in Wheeler, Gray, Archer, and Young Counties, Texas, at the Courthouse door of Archer County, Texas, and at said sale the properties were struck off to Guy Rogers, who purported to act and bid therefor as a trustee under
131 the will of L. B. Rogers, his deceased father, for the price and sum of $250, and a deed was thereupon made by Ray Bland, as trustee, to Guy Rogers, Trustee under the will of L. B. Rogers, deceased, of all the royalties situated in Gray, Wheeler, Young. and Archer Counties, Texas, for a purported consideration of $250, which sum is wholly and grossly inadequate and much less than the value of the royalties purchased, and in this connection the complainants say that the reasonable and fair market value of said royalties at said time was at least the sum of $20,000, a sufficient value to pay not only the debts secured in the deed of trust to Charles L. Black and Guy Rogers, but a substantial overplus to apply upon the indebtedness due this complainant. A copy of the trustee's deed is attached to this petition, marked Exhibit "C," and made a part hereof.

XI.

These complainants say that the sale and foreclosure was made for the purpose of placing said property beyond the reach of this creditor and to prevent these complainants from collecting any portion of the indebtedness due them, in the event it was finally determined that the obligation sued upon is a valid obligation of the Wichita Royalty Company, and that said sale was for a grossly inadequate price, made to a party who occupied a confidential relationship to the complainant, as well as to the Wichita Royalty Company, and that said sale amounts to at least a constructive, if not an actual fraud upon the rights of these complainants and should be vacated and set aside.

XII.

Complainants say that at the time of the execution of the mortgage upon the Oklahoma properties and the execution of the deed of trust and oil assignments upon the remaining Texas properties, and at the time
132 of the sale under the deed of trust by Ray Bland as trustee, and at the time of the purchase of said properties by Guy Rogers as trustee under the will of L. B. Rogers, deceased that the assets of the Wichita Royalty Company were wholly inadequate to pay all of its indebtedness, including the indebtedness due the complainants herein, but that said Royalty Company owned substantial assets and these complainants were entitled to a ratable payment of their indebtedness along with that of all other creditors, and that the said Wichita Royalty Company was therefore at the times above mentioned insolvent and upon its insolvency its assets became a trust fund charged with the ratable payment of all of its debts, and the trustee was without power to prefer one creditor over another, or to execute a mortgage or deed of trust upon its properties, which had that effect, but was in duty bound in equity to hold said properties for the ratable payment of all of the creditors of said company and to fairly apply the proceeds and revenues therefrom for said purpose, and that the execution of the mortgages and especially the sale by the trustee of the properties violated this equitable principle, and, if sustained, would preclude the complainants from a ratable and equitable distribution of the assets of the Wichita Royalty Company for the payment of their debts and wholly deprive these complainants of the payment of their indebtedness, should the complainants be successful in establishing their debt as a valid obligation against the Wichita Royalty Company.

Therefore, Guy Rogers, as trustee under the will of L. B. Rogers, deceased, is made a party hereto for the purpose of vacating said sale, and Guy Rogers, individually,

and Charles L. Black are made parties hereto for the purpose of inquiring into the validity of the respec-
133 tive mortgages and deeds of trust held by them and the amount of the indebtedness due said respective attorneys and secured under said mortgages and deeds of trust.

XIII.

That in the latter part of 1926, while George Peckham was trustee of the Wichita Royalty Company, he acquired certain royalty interests in Wheeler and Gray Counties, State of Texas, for the benefit and use of the Wichita Royalty Company and made a conveyance to said Royalty Company of such interests, except said conveyances are somewhat indefinite and ambiguous and there appears to stand in the name of G. W. Peckham, individually, outstanding royalty interests in said counties which complainants allege was intended to have been conveyed to the Wichita Royalty Company, which royalty interests outstanding in the name of G. W. Peckham and which apparently did not pass by the deeds executed by G. W. Peckham to the Wichita Royalty Company are as follows:

An undivided 15/32nds interest in the oil, gas, and other minerals in the Northeast ¼ of the Northeast ¼ of Section 47, Block 24, H. & G. N. Ry. Co. Survey, Wheeler County, Texas;

An undivided 1/64th interest in the oil, gas, and other minerals in the West ½ of the Southeast ¼ of Section 43, Block 24, H. & G. N. Ry. Co. Survey, Wheeler County, Texas;

An undivided 7/64ths interest in the East ½ of Section 54, Block 24, H. & G. N. Ry. Co. Survey, Wheeler County, Texas; and

An undivided 1/16th interest in the Northwest ¼ of Section 44, Block 24, H. & G. N. Ry. Co. Survey, Wheeler County, Texas.

That said royalties are apparently outstanding in the name of George Peckham, the succession of which title is W. H. Peckham, administrator of the estate of George Peckham, and these complainants allege that said royalties were purchased for the use and benefit of
134 the Wichita Royalty Company and were intended to be conveyed to the Wichita Royalty Company, and should be so conveyed by the administrator of said estate so that the same would be subject to any indebtedness owing by the Wichita Royalty Company to these complainants, and that W. H. Peckham, administrator of the estate of G. W. Peckham, is therefore made a party to this suit in order to inquire into and to quiet title in and to said royalties, and to determine the rights of the complainants thereto by reason of the facts pleaded in the following paragraph.

XIV.

That at the time the Wichita Royalty Company, respondent herein, filed its cross-complaint against this complainant it sought judgment against this complainant for the monies expended by G. W. Peckham in the purchase of said Wheeler and Gray County royalties and alleged that the transaction whereby G. W. Peckham purchased and conveyed said royalties to the Wichita Royalty Company was a fraudulent transaction, in violation of the duty said trustee owed to the Wichita Royalty Company, and elected to repudiate the purchase of said royalties and sought a judgment for the purchase price thereof paid by the Wichita Royalty Company against the complainant City National Bank of Wichita Falls, Texas, that since the filing of said cross-complaint the Gray and Wheeler County royalties have become valuable, oil has been discovered thereon, and they are worth in excess of

the purchase price paid, and, if this complainant should be required to respond for the purchase price of said royalties, it would therefore in equity be entitled to a decree divesting the legal title from the Wichita Royalty Company and the administrator of the estate of G. W. Peckham and investing the same, with the pro-
135 ceeds therefrom, in this complainant, City National Bank of Wichita Falls, Texas; that these are the only royalties standing in the name of the Wichita Royalty Company in Gray and Wheeler Counties, State of Texas, and the deed of trust made and executed by E. E. Scannell to secure Charles L. Black, to Ray Bland as trustee, and the foreclosure thereunder, has cast a cloud upon the title to said royalties should it be determined that said royalties did not belong to the Wichita Royalty Company, by reason of the alleged fraud of G. W. Peckham, its trustee.

XV.

The complainants say that the three oil companies, namely, Humble Oil & Refining Company, Continental Oil Company, and The Texas Company, are oil purchasing companies purchasing the oil from certain properties owned by the Wichita Royalty Company, including the Wheeler and Gray County properties, and these oil purchasing companies are made parties solely for the purpose of impounding the proceeds of the oil so that the same might be available for the payment of the indebtedness due these complainants.

XVI.

That the facts hereinabove pleaded are such as to create an equitable lien in favor of the complainants upon all of the assets owned and held by the Wichita Royalty Company and its trustee, E. E. Scannell, and these complainants charge and allege that they are entitled to an equitable lien upon the respective royalties, lands, leases, oil

produced, and the proceeds therefrom to be applied and foreclosed for the satisfaction and payment of the indebtedness due said complainants, and for a cancellation of the trustee's deed made by Ray Bland to Guy Rogers, Trustee under the will of L. B. Rogers, deceased.

136 XVII.

That subsequent to the execution of the notes herein sued upon and on March 4, A. D. 1933, pursuant to a presidential proclamation, the complainant bank closed its doors for the transaction of business and thereafter, on the 15th of March, 1933, at the close of said national banking holiday, made such by the proclamation of the President of the United States, certain stockholders and directors of the complainant bank herein formed another national banking association under the name of the "City National Bank in Wichita Falls," which was duly licensed and authorized to transact business as a national bank in the city of Wichita Falls and which took over the same banking offices, establishment, and place of business as the complainant herein, and on the 15th day of March, A. D. 1933, this complainant made and entered into a contract with the City National Bank in Wichita Falls whereby this complainant bank sold, transferred, assigned, and indorsed to the City National Bank in Wichita Falls (the new bank) certain bills receivable, negotiable instruments, cash items, choses in action, bonds, warrants, and other assets listed in an Exhibit "A" attached to said agreement, including all of its cash; that the total face value of the assets transferred and delivered by the complainant bank to the new bank was in the aggregate sum of $3,455,613.43, and that all of the remaining assets owned by the complainant bank were also pledged to J. T. Harrell, Trustee, with the agreement that the funds derived from the sale of such assets held under such pledge or the collections upon the obligations should constitute a trust fund, should be kept intact and on deposit

in some solvent bank for the purpose of securing the new upon its indorsement, for the purpose of redeeming any assets that became doubtful or losses which might be sustained by the new bank in connection with
137 such transaction, and included in said transfer and pledge to J. T. Harrell, Trustee, was the indebtedness here sued upon, to wit, the notes of the Wichita Royalty Company; that as a consideration for such transfer, sale, assignment, and pledge the City National Bank in Wichita Falls assumed and agreed to pay all of the depositors of the complainant bank herein, as shown by the books of said complainant bank at the close of business on March 14, 1933, which deposits were in the aggregate sum of $3,286,707.46, and no more, and in addition thereto agreed to pay certain other liabilities aggregating $566,-500, which included certain bills payable to the Federal Reserve Bank and others, so that the total obligations assumed by the said new bank were $3,853,207.46; that the total face value of the assets assigned outright was $3,-455,613.43, leaving a deficiency of $397,594.03 due the new bank from the old bank which sum was secured by a pledge, assignment, and transfer of the remaining assets of the old bank, which remaining assets at said time had a face value of $2,699,786.20, a copy of which agreement is attached to this bill, marked Exhibit "D", and made a part hereof; that a note payable to the order of the City National Bank in Wichita Falls (the new bank) was executed by the complainant bank herein to cover such deficiency.

That said contracts and agreements were duly made, authorized, ratified, and confirmed by the respective directors and stockholders of each of said banks, and thereafter the complainant bank herein, pursuant to Section 181, Title 12, of the United States Code Annotated, and on the first of July, A. D. 1933, voted to go into liquidation, two-thirds of all of the stock voting in favor of the liquidation of said bank, and thereupon the shareholders designated C. E. Basham as the Liquidating Agent, who, by

138 virtue of the action of the stockholders and the laws of the United States of America under which they were acting, proceeded to orderly liquidate the assets of the old bank and to apply the proceeds to the debts and obligations thereof; that the said C. E. Basham continued to act as Liquidating Agent until January 8, 1935, at which time the said C. E. Basham resigned and E. A. Deaton was duly selected in the manner provided by law, and has continued to act as Liquidating Agent of said bank since said time and is now the duly acting and qualified Liquidating Agent of the complainant bank herein.

That the City National Bank of Wichita Falls owns the entire assets of the Texas Investment Company, which company owns approximately 200 residential town lots in the city of Wichita Falls in what is known as the "Marlborough Addition," in the vicinity of the new Junior College; that in addition thereto the complainant bank herein owns various and divers other properties, real and personal, in Wichita County, Texas, and elsewhere, all of which are pledged as security for the balance of the deficiency owing by the complainant bank to the City National Bank in Wichita Falls, and that E. A. Deaton has continuously since his qualification as Liquidating Agent been orderly liquidating said property up until the time the notice lis pendens was filed of the cross-complainants' suit against the complainant bank herein, so that since the execution of the contract of March 15, 1933, up until the time of the filing of the cross-action by the Wichita Royalty Company against the complainant bank the assets of the old bank have been in the process of orderly liquidation under the Liquidating Agents appointed by the shareholders; that there is yet due by the complainant bank upon the deficiency note and contract to the City National Bank in Wichita Falls the sum of $189,000.

139 XVIII.

That on June 18, 1936, the Wichita Royalty Company and E. E. Scannell, Trustee, together with others, filed

in the District Court of Wichita County, Texas, for the 30th Judicial District a cross-action and interpleader against the complainant bank herein and its Liquidating Agent, and against the City National Bank in Wichita Falls and against J. T. Harrell as trustee under the pledge agreement, and others, wherein it claimed an indebtedness upon a deposit liability against the complainant bank herein in the sum of $200,000, which suit attacked also the contract between the complainant bank and the City National Bank in Wichita Falls (the new bank) as void and fraudulent, and likewise attacked the pledge of the remaining assets of the old bank to J. T. Harrell, Trustee, and asked for an accounting and winding up of the affairs of the City National Bank of Wichita Falls; that the Texas Investment Company was likewise made a party to said suit and the title to the said city property was attacked in said cross-action and interpleader; that a notice lis pendens was filed of said cross-action and interpleader on the 19th of June, 1936, with the County Clerk of Wichita County, Texas, and duly recorded on June 19, 1936; that said notice lis pendens gave notice that in said suit the Wichita Royalty Company and E. E. Scannell, its trustee, sought a recovery against the City National Bank in Wichita Falls (the new bank) and against J. T. Harrell, individually and as trustee for the City National Bank of Wichita Falls, together with E. A. Deaton and other named parties therein, for the sum of $200,000, alleging that the City National Bank of Wichita Falls was insolvent at the time of the contract between the two banks, and that said notice lis pendens further charged that said transfer, pledge, and assignment between the complainant bank and the City National Bank in Wichita
140 Falls created a preference and that the Wichita Royalty Company claimed an equitable lien upon all of the assets belonging to the City National Bank of Wichita Falls, Texas, at the time of said respective assignments and pledges, and said notice lis pendens further charged that all transfers and conveyances sought to be created between the respective banks were void, a

copy of which notice lis pendens is attached to this bill of complaint, marked Exhibit "E", and made a part hereof, which notice lis pendens has never been vacated and creates a cloud upon the title to all of the assets of the City National Bank of Wichita Falls, the Texas Investment Company, and E. A. Deaton as Liquidating Agent of the City National Bank of Wichita Falls, and has rendered impotent the power of E. A. Deaton as Liquidating Agent to further orderly liquidate the assets of the old bank; that it is impossible, with the cloud outstanding by virtue of said notice lis pendens, for E. A. Deaton to orderly and properly liquidate the affairs of said bank and it becomes necessary therefore to wind up the affairs of the City National Bank of Wichita Falls in this proceeding, in order that the validity of the respective contracts, transfers, and conveyances between the two banks may be inquired into, ascertained, and adjudicated and in order that the claims, liens, and charges of the respective parties may be marshaled, determined, ascertained, and adjudicated.

This complainant bank charges and claims that the transfers so made by this complainant bank to the City National Bank in Wichita Falls were valid and legal and without fraud; that the respondent Wichita Royalty Company is indebted to this complainant bank in the sums hereinabove set out; that it has a valid, equitable lien upon all of the assets of the Wichita Royalty Company and its Trustee as security for the payment of such indebtedness, and that such in-
141 debtedness so owing by the Wichita Royalty Company to this complainant is covered by the pledge to the City National Bank in Wichita Falls and the proceeds from the collection of this indebtedness should be applied to the payment of such sums as may be due and owing by this complainant to the new bank. It denies that it is indebted in any sum to the Wichita Royalty Company and E. E. Scannell, its Trustee, but the Liquidating Agent is powerless to adjudicate these mat-

ters. It is his desire to liquidate, receive, collect, and distribute the assets of the City National Bank of Wichita Falls in an orderly manner and to whom may be entitled to receive the same. The notice lis pendens and the suit filed by the respondent Wichita Royalty Company aforesaid makes it impossible for this complainant and its Liquidating Agent to sell and convey title to prospective purchasers, makes it impossible for the Liquidating Agent (on account of the claimed indebtedness by the respondent Wichita Royalty Company) to disburse funds received from the sale or liquidation and collection of the assets of the old bank, and an orderly winding up of the affairs of the old bank is required in this proceeding, as well as a determination of the validity of the transfer made by the old bank to the new bank under Section 181, Title 12, United States Code Annotated.

Wherefore, premises considered, the complainants pray:

1. For the establishment and validity of an equitable lien against the assets of the Wichita Royalty Company.

2. For an ascertainment and adjudication of the validity of the mortgages, deeds of trust, liens, and claims of the respondents Guy Rogers and Charles L. Black.

3. For a cancellation of the deed from Ray Bland, Trustee, to Guy Rogers, Trustee under the will
142 of L. B. Rogers, deceased, and that said deed be held void.

4. For an adjudication and foreclosure of said equitable lien upon all of the assets, lands, leases, oil runs, and proceeds from the sale of oil produced from the properties owned and held by the Wichita Royalty Company, and for the establishment of the indebtedness due and owing by the said Wichita Royalty Company to the complainants herein, and for the fixing and enforcement of the deficiency in accordance with the rules applicable in equity.

5. For a reformation of the conveyances made by G. W. Peckham while trustee to the Wichita Royalty Company of the royalties situated in Wheeler and Gray Counties, Texas, now standing in the name of G. W. Peckham, deceased.

6. For an ascertainment and adjudication of the validity of the transfers, pledges, assignments, and conveyances made by the City National Bank of Wichita Falls to the City National Bank in Wichita Falls, pursuant to the contract of March 15, A. D. 1933.

7. For an ascertainment and adjudication of such debts as may be due and owing by the City National Bank of Wichita Falls, Texas, and an ascertainment of the creditors of said bank and the rights and securities thereof, and for a winding up of the affairs of the City National Bank of Wichita Falls, Texas, a national banking association.

8. For the removal of cloud against the title of the assets held by the Liquidating Agent and J. T. Harrell, as Trustee, and the complainant herein as cast thereon by the notice lis pendens filed herein, and for the enforcement of all of the rights of the City National Bank of Wichita Falls, as well as its creditors, growing out of the winding up of the affairs of said bank.

143 Complainants pray for such other relief, general or special, as they may be entitled to in a Court of equity.

WEEKS & MORROW,
BULLINGTON, HUMPHREY & KING,
Attorneys for Complainants, City National Bank of Wichita Falls and E. A. Deaton, Liquidating Agent.

The State of Texas,
County of Wichita.

E. A. Deaton, Liquidating Agent, and J. T. Harrell, President of the City National Bank of Wichita Falls, respectively, being duly sworn, say that they are each familiar with the facts pleaded in the foregoing bill of complaint and the same are true.

J. T. HARRELL,
E. A. DEATON.

Sworn To And Subscribed Before Me by E. A. Deaton and J. T. Harrell, this 21st day of December, A. D. 1936.

MRS. GERTRUDE TURNER,
(Seal) Notary Public, Wichita County, Texas.

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144 EXHIBIT "A"—Mortgage, Wichita Royalty Company to Guy Rogers, Dated 2/25/32; omitted from the printed record, being heretofore copied at page 18.

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EXHIBIT "B"—List of Royalties in Wichita County, Texas; omitted from the printed record, being heretofore copied at page 19.

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EXHIBIT "C"—Trustee's Deed, Dated 8/7/34; omitted from the printed record, being heretofore copied at page 20.

* * * * * * * *

160 EXHIBIT "D".

State of Texas,
County of Wichita.

Whereas, heretofore, on this day, to-wit, the 15th day of March, A. D. 1933, the Board of Directors of The City National Bank of Wichita Falls, at a meeting of said Board, duly and legally called, adopted a resolution which authorized the officers of said Association to commence proceedings for the voluntary liquidation of said Association, under the provisions of the Revised Statutes of the United States, providing for voluntary liquidation of National Banking Associations, and said resolutions also provided for the sale and transfer of certain assets of the said The City National Bank of Wichita Falls, including cash on hand, to the "City National Bank in Wichita Falls," located at Wichita Falls, Texas, in order to fully protect and secure the said "City National Bank in Wichita Falls" for all monies advanced and to be advanced by the said "City National Bank in Wichita Falls" in the assumption and payment of certain liabilities of the said City National Bank of Wichita Falls, as hereinafter provided, and

Whereas, the resolution of the Board of Directors further authorized and directed the officers of the said The City National Bank of Wichita Falls to make and execute such contracts with the "City National Bank in Wichita Falls" as might be necessary and appropriate, in order to carry out the general purpose of the resolution adopted by the Board of Directors of the said The City National Bank of Wichita Falls, reference to which resolution, found on the minutes of said Association, is here made, and

Whereas, the Board of Directors of the "City National Bank in Wichita Falls," at a meeting of said Board, duly and legally adopted a resolution, whereby the said "City National Bank in Wichita Falls" assumed the payment

of the depositors' liabilities, and certain other liabilities
of the said The City National Bank of Wichita
161 Falls, as hereinafter provided, upon condition
that assets of The City National Bank of Wichita Falls should be sold, transferred, assigned, indorsed and delivered unto the said "City National Bank in Wichita Falls," sufficient in amount and value to fully protect and adequately secure against loss the said "City National Bank in Wichita Falls" for any and all amounts as to which payment is assumed under said resolution adopted by the Board of Directors of the said "City National Bank in Wichita Falls," and

Whereas, said Board of Directors of the "City National Bank in Wichita Falls" authorized the officers of said Association to make such contract as might be necessary to carry out the provisions of such resolution, the details of which were to be left to the discretion of said officers.

Now, Therefore, these "Articles of Agreement" entered into, by and between the said "The City National Bank of Wichita Falls," hereinafter called First Party, and the said "City National Bank in Wichita Falls," hereinafter called Second Party.

Witnesseth:

(1) The First Party has sold, transferred, assigned and indorsed, and does by these presents hereby sell, transfer, assign and indorse unto the Second Party, its successors and assigns, the bills receivable and other negotiable instruments, cash items, choses in action, bonds, warrants and other assets, as shown by Exhibit "A" attached hereto and made a part of this contract, and the said First Party has also transferred, assigned and delivered unto the said Second Party all its cash now on hand, the total face value of the assets sold, transferred, assigned, indorsed and delivered unto the said Second Party being

in the aggregate sum of Three Million Four Hundred Fifty Five Thousand Six Hundred Thirteen and 43/100 ($3,455,613.43) Dollars.

162 To Have And To Hold The Same unto the said Second Party, its successors and assigns, vendees and indorsees, the said First Party agrees, for itself and its successors, to warrant and forever defend unto the said Second Party, its successors and assigns, indorsees and vendees, the title to all the assets this day sold, transferred, assigned, indorsed and delivered unto the said Second Party, against any and all persons whomsoever claiming or to claim the same or any part thereof.

(2) First Party also agrees to and with Second Party that Second Party may renew and extend the date of payment of any bills receivable or other negotiable instruments this day sold, transferred and assigned to it from time to time, without notice to the said First Party, or its successors, and in order to fix the liability of the First Party upon its indorsement absolutely and unconditionally, the said First Party agrees, for itself and its successors, that as indorser it waives presentment for payment, protest and notice of protest, and non-payment of any of said bills receivable or other negotiable instruments, of any kind or character, and agrees and consents that Second Party may renew any of said bills receivable as long as it may desire, and may extend the time of payment of any of said bills receivable, and may alter or change the collateral securing any of said bills receivable in any such manner as the officers of said Second Party may, in their discretion deem best, all without in any manner releasing or impairing the liability of the said First Party as an indorser upon said bills receivable or other negotiable instruments.

The First Party likewise agrees with the Second Party that it may sell, transfer, assign, indorse or deliver any of said bills receivable or other negotiable instruments, or

any other of the assets this day purchased, to any other purchaser or purchasers, and that the purchaser or purchasers or indorsees, vendees or transferees of Second Party shall have all the rights extended by the First Party to Second Party under this contract.

163 (3) The First Party also agrees with Second Party that if Second Party shall at any time conclude that any of the bills receivable or other negotiable instruments, or renewals thereof so indorsed to it by First Party, are not worth their face value, that is the amount of the principal shown to be due on said bills receivable or other negotiable instruments, then and in that event the said First Party will upon demand being made upon it or its successors by the said Second Party immediately take up and pay off all of such doubtful bills receivable or other negotiable instruments, or renewals thereof, in cash, in which event the Second Party will transfer such doubtful bills receivable or other negotiable instruments to the First Party without recourse, or if acceptable to the Second Party, the First Party may substitute other bills receivable or other negotiable instruments or assets, or the promissory note of First Party in an amount sufficient to discharge and take up the bills receivable or other negotiable instruments which the Second Party may not believe collectible and worth their face value, and upon which Second Party may have demanded payment or substitution, and in the event First Party refuses or fails, upon the demand of Second Party, to pay cash or substitute other acceptable assets for such bills receivable or other negotiable instruments which Second Party may think doubtful and not worth their face value, then and in that event, it is agreed that the aggregate amount of said bills receivable or other negotiable instruments concerning which the said Second Party may be in doubt as to the value thereof, shall constitute a binding and valid obligation against First Party, its successors and assigns, due and payable upon demand, and suit may be brought against the said First Party for the

aggregate amount of any of such bills receivable or other negotiable instruments, or either of them, and ten per cent additional of the amount of the principal of any or all of such bills receivable or other negotiable in-
164 struments shall be added thereto as attorneys' fees, and this right and privilege shall inure to the benefit of any holder or holders of any of such bills receivable or other negotiable instruments indorsed by First Party to Second Party, and such holder or holders of any such bills receivable or other negotiable instruments shall in like manner become the creditor of First Party by reason of becoming the owner or holder of any of said bills receivable or other negotiable instruments which have been unconditionally indorsed by the said First Party as herein provided.

It is also agreed that Second Party may at its option allow First Party to substitute other bills receivable or negotiable instruments, or its promissory note or notes in lieu of those it is called upon to redeem because doubtful, and as to any such bills receivable or other negotiable instruments substituted in lieu of those of doubtful value, the said First Party agrees that the provisions of this section of this contract shall apply to said substituted bills receivable or other negotiable instruments in the same manner as is herein provided as to the bills receivable and other negotiable instruments this day sold, transferred, delivered and indorsed to the said Second Party, and this obligation shall likewise be valid and binding upon the said First Party, its successors and assigns.

(4) To further secure Second Party in its assumption of the liabilities of the First Party to its depositors and certain other creditors herein mentioned, it is agreed that all of the remaining assets of First Party not this day transferred to Second Party, shall be pledged to J. T. Harrell, Trustee, and that the funds derived from the sale of such assets or any of them, or the collection of
165 any of such obligations, shall constitute a trust fund which shall be kept intact and on deposit in

some solvent bank, for the purpose of securing Second Party upon the indorsement which has this day been made, or which may hereafter be made upon said bills receivable or other negotiable instruments purchased from First Party and for the purpose of redeeming any assets which may become doubtful, this additional security being hereby given and pledged to Second Party for the purpose of absolutely securing and making good the indorsement of the First Party upon its said bills receivable and other negotiable instruments, sold, transferred, assigned and indorsed to Second Party.

(5) The First Party, until final liquidation of its affairs, and final settlement with its shareholders, agrees to maintain its corporate existence and agrees that its officers and directors will at all times, when called upon to do so by Second Party, execute and deliver in the name of First Party all other and further instruments of writing of any kind or character which the officers of Second Party may deem necessary to fully effectuate the transfer of the assets this day delivered.

(6) In consideration of the covenants and agreements herein made by First Party, it is hereby agreed by Second Party that it will assume, and that it does by these presents hereby assume and promise to pay when and as the same are presented for payment, all of the depositors of First Party, as shown by the books of First Party at the close of business on March 14, A. D. 1933, said deposits being in the aggregate of Three Million Two Hundred Eighty Six Thousand Seven Hundred Seven and 46/100-($3,286,707.46) Dollars, and no more, and it also assumes and agrees to pay certain other liabilities of said First Party, amounting to Five Hundred Sixty Six Thousand Five Hundred and No/100-($566,500.00)
166 Dollars, as shown by a list of such liabilities, attached hereto and marked Exhibit "B" and made a part hereof, and no more.

(7) It is distinctly understood and agreed between the parties hereto, that neither the resolutions of the Board of Directors of the respective parties hereto, nor this contract, nor any other act or agreement had or made between the parties hereto, shall in any manner be so construed as to relieve the shareholders of First Party from their legal liability as shareholders to respond, in the event it may be necessary to have recourse upon such shareholders' liability for any deficit which may exist in the value of the bills receivable or other negotiable instruments this day sold, transferred and unconditionally guaranteed by First Party to Second Party, it being the intention of the parties hereto that should Second Party decide that the bills receivable or other negotiable instruments or other assets this day sold, transferred and assigned by First Party, are insufficient to pay the liabilities of First Party which have been paid and which have been assumed by Second Party, then and in that event the Second Party, its successors and assigns, shall have recourse against the shareholders of First Party, as provided by Section 64, Title 12, United States Code Annotated, and other provisions of said Title 12, for any deficiency and for full and complete enforcement of this contract, according to its terms, the intention being to absolutely bind the First Party by unconditional indorsement and unconditional warranty, as hereinabove set forth, for the payment of the face value and interest due upon all the bills receivable and other negotiable instruments this day sold, assigned, transferred and delivered to Second Party, and in case the face value of, that is the principal of any of said bills receivable, are not collected by the said Second Party or any holder or holders thereof, together with all interest due or to become due thereon, according to the face, tenor and effect thereof, or in case said bills receivable or other negotiable instruments, bonds, warrants, cash items and
167 choses in action are at any time deemed uncollectible or doubtful by the said Second Party, or any holder thereof, and First Party fails to take up

said bills receivable in cash or to substitute other acceptable assets to the satisfaction of Second Party, then and in that event, the Second Party, its successors, assigns and indorsers, shall have a valid and binding obligation against the said First Party for the principal, interest and attorneys' fees due on said bills receivable and other negotiable instruments, according to the face, tenor and effect thereof, and may proceed against First Party, or its shareholders to enforce the same, and no lack of diligence on the part of the Second Party, or any of its indorsees, shall constitute any defense to such cause of action, provided that no demand shall be made by Second Party against First Party, and its shareholders, after three years from the date hereof, during which time the guarantee herein and hereby made by First Party to Second Party shall remain in full force and effect.

(8) It is also agreed between the parties hereto, that inasmuch as some of the bills receivable and other negotiable instruments which First Party has this day sold, transferred and assigned to Second Party, have already been pledged to secure other bills payable of First Party, that as to such bills receivable or other negotiable instruments which First Party is unable upon this date to make delivery to Second Party, Second Party may at its option require First Party to execute and deliver to Second Party the promissory note of First Party for the face value of all those bills receivable or other negotiable instruments which First Party has sold to Second Party, and is unable to deliver to Second Party upon this date.

168 (9) It is also understood and agreed between the parties hereto that as to First Party, this guarantee shall be a continuing guarantee, and apply to and be binding upon First Party, its successors and assigns, as to any renewals of notes sold, transferred and delivered by First Party to Second Party during the existence of this agreement, and it is also agreed that Second Party may grant time or other indulgence to the

makers of the bills receivable and other negotiable instruments sold, transferred, delivered and indorsed by First Party to Second Party, and may also make and grant extension and renewals from time to time to the makers of said bills receivable and other negotiable instruments, all without affecting or in any way impairing the validity of this agreement, or the liability of First Party herein.

Second Party may also change the collateral on any of the bills receivable and other negotiable instruments, bonds, warrants, cash items and choses in action, or may make such releases or exchanges of collateral as may to the Second Party and its officers seem best, to effectuate the final collection of the bills receivable and other negotiable instruments, bonds, warrants, cash items and choses in action so indorsed and guaranteed by First Party herein, and this without in any manner affecting or in any way impairing the validity of either the guarantee or indorsement made by First Party to Second Party herein.

In Witness Whereof, the parties hereto have caused these presents to be signed and delivered in duplicate, each an original, by their proper corporate officers, and have caused their proper corporate seals to be hereto affixed, this the 15th day of March A. D. 1933. Erasures and interlineations made and approved before signing.

THE CITY NATIONAL BANK OF
WICHITA FALLS,
By J. T. HARRELL,
President, First Party.

Attest:

ORAL JONES,
Cashier.

CITY NATIONAL BANK IN
WICHITA FALLS,
By J. T. HARRELL,
President, Second Party.

Attest:

JACK JEFFUS,
Cashier.

169 EXHIBIT "A".

List of Bills Receivable and Other Negotiable Instruments, Cash Items, Choses in Action, Bonds, Warrants and other assets this day sold, transferred, assigned, indorsed and delivered to City National Bank in Wichita Falls by The City National Bank of Wichita Falls, as per contract executed on March 15, 1933, to which this list is hereby attached and made a part of.

| | |
|---|---|
| Cash, Cash Items and due from banks.... | $ 191,286.24 |
| United States Bonds and Securities ..... | $1,064,000.00 |
| Other Stocks and Bonds (County Warrants) | 65,085.93 |
| Loans and Discounts ..... | $2,532,835.29 |
| Total ..... | $3,853,207.46 |

EXHIBIT "B".

List of certain other liabilities besides deposits, totaling $3,286,707.46, as shown by books of The City National Bank of Wichita Falls at the close of business on March 14, 1933, which liabilities are assumed by City National Bank in Wichita Falls, as per contract executed March 15, 1933, to which this exhibit is attached and made a part of.

| | |
|---|---|
| Bills Payable— | |
| First National Bank, Wichita Falls, Texas.. | $125,000.00 |
| First National Bank in Dallas, Dallas, Texas | 55,000.00 |
| Federal Reserve Bank of Dallas, Dallas, Texas | 386,500.00 |
| Total ..... | $566,500.00 |

170 EXHIBIT "E".

Wichita Royalty Co. et al Lis Pendens Notice, vs. City Natl. Bank et al.

State of Texas,
County of Wichita.

Notice is hereby given that in a suit pending in the 30th District Court of Wichita County, Texas, and numbered 24549-A, Wichita Royalty Company and E. E. Scannell its Trustee, filed on June 18, 1936, a third amended original answer, cross-action and interpleader against The City National Bank in Wichita Falls, Texas; J. T. Harrell, individually and as Trustee for The City National Bank of Wichita Falls, Texas, W. H. Peckham as administrator of the Estate of G. W. Peckham, Deceased; William Peckham and George Peckham; Robert Peckham; Mrs. Hazel D. Peckham; Texas Investment Company, E. A. Deaton; L. H. Cullum, Leslie Humphrey, Tarlton Morrow, Jack Jeffus, Oral Jones; Frank Kell; Joe Kell; J. J. Perkins, C. W. Snider; F. P. Timberlake, The Humble Oil & Refining Company; The Texas Company; and The Continental Oil Company, wherein Wichita Royalty Company seeks the recovery of $200,000.00 (Two Hundred Thousand Dollars), interest and costs against the several parties as their liabilities appear, and wherein it is alleged that The City National Bank of Wichita Falls, Texas, was insolvent and in contemplation of continued insolvency long prior to March 1, 1933, and that thereupon its assets became a trust fund for the benefit of creditors to ratably distribute the same, and to make no preference therefrom, but that numerous creditors had been preferred by payment through the action of the members of the Board of Directors of said bank to the prejudice of Wichita Royalty Company and with the further allegation that among the assets of The City National Bank of Wichita Falls, Texas, is all of the property standing in the name of Texas Investment Company, and that all of the assets both real

and personal, belonging to The City National
171 Bank of Wichita Falls, Texas, at the time of its insolvency and at the time it became in contemplation of insolvency were and are charged with an equitable lien for the benefit of all creditors, and that all transfers or conveyances thereof, and all liens sought to be created on any part of such assets are absolutely void, and that the parties and corporations to whom such a portion of such assets were transferred and to whom liens thereon were given knew of the insolvency of said bank, and they have held and now hold all of such assets that are still in their possession in trust for Wichita Royalty Company and other creditors; and as security for the $200,000.00 and interest thereon sued for Wichita Royalty Company claims a lien upon all properties standing in the name of Texas Investment Company and standing in the name of The City National Bank of Wichita Falls, Texas, as of the date of its contemplated insolvency as well as upon the assets that may have been assigned or conveyed by said bank thereafter; and prayer is made in said suit that said debt be recovered, said lien enforced, said trust fund restored, and said assets preserved for ratable distribution among the creditors of said bank, and for other relief as from said amended pleading is manifest.

KILGORE & ROGERS,
By RAY BLAND,
Attorneys for Wichita Royalty Company.

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## AMENDED PLEA TO FEDERAL JURISDICTION AND MOTION TO REMAND.

Filed in U. S. District Court March 27, 1937.

172 (Title Omitted.)

Having pleaded herein under direction of the Court upon its having overruled an original plea to the juris-

diction and motion to remand, and decisions by Courts of high authority having been published since the action upon the original motion, Come Now Wichita Royalty Company and E. E. Scannell, herein called Cross-Complainants, and appear hereby only for the purpose of pleading to the jurisdiction of this Court and for second motion to remand, and for such other purposes as hereinafter shown, and would respectfully show:

I.

That the suit filed herein by City National Bank of Wichita Falls was originally filed in the District Court of Wichita County, Texas, in 1930, said suit so filed being upon the identical cause of action herein asserted against Cross Complainants, to which suit Cross Complainants pleaded these defenses, trial was had, judgment rendered and appeal taken, reversal had and the cause remanded by the highest Court of the State of Texas with instructions to proceed to judgment in accord with the principles of law there stated. It is shown that such suit is not within the original jurisdiction of this Court, is not one described in the Removal Statutes, but is one in which said bank first invoked the State Court's jurisdiction and later removed the same to the National Court, there being no federal question involved, no diversity of citizenship existing, and no cause of action pleaded within this Court's jurisdiction.

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II.

Likewise Complainant Bank has sued The Texas Company, the Humble Oil & Refining Company and the Continental Oil Company to impound the value of minerals purchased from producing properties in Texas, such suits involving no federal question, no diversity of citizenship existing, and no original jurisdiction vesting in the National Court.

III.

Further invoking the State Court's jurisdiction and prior to petitioning for removal, the Complainant Bank sued Charles L. Black, Guy Rogers and E. E. Scannell, seeking a cancellation of recorded liens and suing for an accounting, later petitioning to remove its suit to the National Court.

IV.

On February 14, 1931, Cross Complainants filed their cross-action in the said suit so filed by Complainant Bank in the State Court, seeking to recover its deposit balance with the Complainant Bank and seeking likewise to recover its loss by reason of breaches of trust by G. W. Peckham as trustee of Wichita Royalty Company with the active participation and through the facilities of the Complainant Bank and J. T. Harrell, which cross-action so filed, the parties thereto appeared and pleaded the same defenses that are herein pleaded, the trial was had, judgment rendered, an appeal taken, a decision adverse to the Complainant Bank rendered by the highest Court of the State, with an order of remand therefrom to the Trial Court to proceed to judgment for Wichita Royalty Company in accord with the principles of law there decided. Thereafter the parties thereto sought to change the forum into which they had voluntarily appeared and moved to remand the cross-action to the National Court.

V.

Cross Complainants filed suit in said State Court against the City National Bank in Wichita Falls
174 and the directors of the City National Bank of Wichita Falls, alleging that upon the insolvency of the City National Bank of Wichita Falls, its assets became a trust fund for the benefit of creditors, one of

whom was and is Wichita Royalty Company; that said new bank came into possession of assets of the insolvent old bank substantially in excess of its debt to Cross Complainants and that the directors of the old bank were instrumental as managing officers of the old bank, in placing the assets of the insolvent corporation beyond the reach of Wichita Royalty Company as a creditor, all of which is more fully shown by pleadings on file.

Cross Complainants would further show that their suit against the old bank is not one to wind up a national bank, but rather to establish a claim against it; that there is no suit herein which involves construction and/or interpretation of a law of the United States; that there is no suit herein arising under and/or based upon any law of the United States; that there is no such diversity of citizenship as to authorize the removal; that there is no suit herein within the original jurisdiction of this Court; that there is no suit herein of the kind described in the Removal Statute; and that this Court is wholly without jurisdiction to hear and determine the suits herein pleaded.

Wherefore, the following alternative prayers are made, each subject and without prejudice to the prayer or prayers that precede it in the order designated as follows:

1. That this cause in its entirety be remanded to the 30th District Court of Wichita County, Texas, whence it was removed;

2. That each and every separate cause of action herein asserted by either party hereto be remanded to the 30th District Court of Wichita County, Texas, prayer being made for remand of all causes of action severally;

3. That as to each cause of action, if any, of which this Court retains jurisdiction, the Court determine
175 and declare the nature thereof, whether cognizable at law or in equity, retaining such, if any,

causes of action properly removed, and that is equitable in nature, upon the equity docket, and transferring to the law docket such causes of action, if any, properly removed to this Court that are actions at law.

4. That the Court enter such other and further orders as in law and equity would redound to an effective adjudication of the several matters raised by the pleadings herein, including the granting of permission to file amended pleadings.

Respectfully Submitted,
KILGORE & ROGERS,
By GUY ROGERS.

The State of Texas,
County of Wichita.

E. E. Scannell, being duly sworn, on oath says that he has read the above plea and motion and the facts therein stated are true.

E. E. SCANNELL.

Sworn to and subscribed before me this 24th day of March, A. D. 1937.

GRACE JARNAGAN,
(Seal) Notary Public Wichita County, Texas.

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COURT'S OPINION ON AMENDED PLEA TO FEDERAL JURISDICTION AND MOTION TO REMAND.

176 Filed March 30, 1937.

(Title Omitted.)

On October 11th, 1930, the City National Bank of Wichita Falls, filed a suit against the Wichita Royalty Company and E. E. Scannell alleging that the company was

a trust operating under a declaration made by R. R. Robertson on June 1st, 1920, and that Scannell was the sole trustee. That the trust was engaged in the business of selling lands, oil properties, mineral rights and royalties. That it was the owner of one-half of the capital stock of the Texas Investment Company, a Texas corporation. That on the 26th of June, 1930, Scannell, as such trustee, executed and delivered to the plaintiff a promissory note in the sum of $22,000.00 due sixty days after date, and that a deed of trust had theretofore been executed, in 1925, to J. T. Harrell as trustee, upon certain realty, for the securing of the notes which preceded the last $22,000.00 transaction. That the company was also the maker and indorser upon an obligation of the Texas Investment Company for $23,500.00 and one for $5,000.00 and another for $5,000.00. That the trust and the trustee are without sufficient assets to pay the indebtedness and are insolvent and that its producing oil properties were being depleted. A receiver was sought, together
177 with judgment and foreclosure.

That suit wended its way through the state trial Court, a Court of civil appeals and the Supreme Court of the state and was finally back in the State Trial Court for further proceedings. On June 18th, 1936, the company and its trustee filed its third amended original answer and cross action and impleaded certain other parties theretofore unknown to the record. It sought $200,000.00, and this pleading covered approximately fifty-five pages. It sought to void a transfer of the assets of the City National Bank of Wichita Falls, the original plaintiff, to the City National Bank in Wichita Falls, alleging that it was made while the transferor was insolvent and in voluntary liquidation. It sought an accounting between all of the parties in both the old and the new institution and was really a bill to wind up the affairs of the bank. It sought such remedies against the liquidating agent of the old institution and declared for a right to share in the funds and assets that that agent was administering. Likewise, it sought a ratable distribution,

among the creditors of the old institution, of the assets which are in the hands of the liquidating agent, who had
theretofore been appointed under and by force
178 of the laws of the United States.

One of the subdivisions of the prayer is, "that the old bank be declared to have been insolvent when payments were made by it to the several parties hereto, and that its assets be decreed to be a trust fund for the benefit of all creditors, and that such creditors, parties hereto, who have been preferred be required to restore the amounts received to the trust fund. That all creditors of the old bank be given notice of the pendency of this suit and permitted to intervene herein and set up their rights with respect to such trust fund, and that such fund be ratably distributed between the creditors of the old bank existing at its insolvency." The suit as thus framed was against the City National Bank of Wichita Falls, its successor, the City National Bank in Wichita Falls, J. T. Harrell, as trustee for the City National Bank of Wichita Falls, W. H. Peckham, administrator of the estate of G. W. Peckham, William Peckham and George Peckham, minor sons of G. W. Peckham, Robert W. Peckham, Mrs. Hazel D. Peckham, The Texas Investment Company, E. A. Deaton, liquidating agent of the City National Bank of Wichita Falls, L. H. Cullum, J. T. Harrell, Leslie Humphrey, Jack Jeffus, Oral Jones, Frank Kell, Joe Kell, J. J. Perkins, C. W. Snider and F. P. Timberlake, each stockholders and directors of the City National Bank
179 of Wichita Falls. In paragraph 39 of that rather unusual pleading is this statement, "and they now sue for themselves and all other creditors similarly situated, and invoke the general equity power of the Court to assert the liens upon all such properties for an accounting, for a restoration of such trust funds as may have been dissipated and/or paid to creditors, for their ratable interest therein, for the determination of the amount of personal liability of the old directors and for judgment thereon, all with the view and to the end that cross complainant be accorded an equal participation in

the assets of the old bank as every other creditor has or may obtain."

It was also alleged that in March, 1933, when, by Presidential proclamation, the bank was closed, that it never re-opened, but was superseded by the City National Bank in Wichita Falls, which succeeded to the assets and liabilities of the old institution and promised to settle such liabilities.

On July 1st, 1936, a petition for removal was filed by the old as well as the new City National Bank and by all of the other defendants in the cross-action.

A motion to remand and a motion for lack of jurisdiction were passed upon by this Court a little later on at the Dallas division of the district.

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At the conveying of this term of Court the plaintiffs in the cross-action have presented these amended motions and with much earnestness ask for a reconsideration by the Court of its previous refusal to either remand or deny jurisdiction.

It is too late now to defend the right of a plaintiff who begins action in the State Court to remove to the National Court if and when national questions arise. The Courts have joined in a procession of opinions supporting that right. The few cases that were to the contrary at the beginning are decidedly in the minority.

Pierce vs. Desmons, 11 F., (2), 327;
San Antonio vs. Shandy, 29 F., (2), 579;
Bankers vs. Insurance, 85 F., (2), 856;
Waco vs. U. S. Fidelity, 293 U. S., 141;
Mason City vs. Boynton, 204 U. S. 570;
Zambrunn vs. Schwartz, 17 F., (2), 609;
American Fruit Growers vs. LaRoche, 39 F., (2) 243;
Guarantee Co. vs. Hanway, 104 F., 369;
Wyman vs. Wallace, 201 U. S., 229.

That the old bank had begun litigation in the State Courts did not prevent it from removing the cross complaint, as soon as it was presented, to the National Court. Since its original suit was based upon an alleged indebted-

ness by the cross acting complainant, in which cross action all of the dealings between it and many others, with the old bank, were pleaded there was no im-
181 propriety in bringing the entire suit to the National Court.

The petition for removal, somewhat epitomized and shortened, claimed that the remedies sought in the cross action classed the case as one arising out of the laws of the United States. There are at least two statutes which seem to cover, almost entirely, the remedies sought. One is title 12 of section 91, U. S. C. A., which relates to transfers of notes and other evidences of debt owing to any national banking association or of deposits to its credit, and specifies that such shall be utterly null and void under the circumstances therein portrayed. That is the section which denies the right to have attachments or injunctions or executions against a national banking association. Title 12 of section 181 U. S. C. A., deals with the right of an association to go into liquidation and to designate a liquidating agent who shall conduct such procedure in accordance with the law and under the supervision of the board of directors. Then there is title 28 of section 41, paragraph 16, U. S. C. A., which gives the National Court jurisdiction of "cases for winding up the affairs of any such bank," meaning national bank.

This Court said in Citizens National Bank in Waxahachie vs. Citizens National Bank of Waxa-
182 hachie, 9 F., (s) 513, that "such suits as are brought by receivers of banks, by trustees, or by others against banks, which would deplete the fund that might be used for the liquidation of its affairs, suits for assessment, are all, plainly, within that phrase of the statute which allows a case for 'winding up the affairs of any such bank' to be tried in the National Court." Citing a long list of authorities.

Counsel present the recent case of Gully vs. First National Bank in Meridian, 57 Supreme Court reporter, 96, decided November 9th, 1936, and, Connally vs. First

State Bank, 86 F., (2) 683, as recent authorities, which delve deeply into the meaning of the phrase, "arising under the constitution and laws of the United States." I have been unable to find anything in either of those cases which denies the National Court jurisdiction over a cause which comes under the statutes above mentioned. The Gully case was a simple suit by a state tax collector to collect a debt. The Connally case was a mere demand for a money judgment. Claims may be established in causes such as those and presented for settlement. That is not the case here pleaded. Here the plaintiffs in the cross action seek to take property, to undo liens, to re-apportion, to, in short, perform all of the essential requisites of a winding up process. It would be
183 impossible—and impossible is a big word—to grant the relief to the complainants in the cross-action without literally taking away from the liquidating agent that which he holds and, without re-apportioning to creditors of the old institution payments upon their obligations. Lawrence National Bank vs. Rice, 83 F., (2), 642; Edwards vs. Gas Co., 184 F., 979; Omaha Nat. Bank vs. Federal Reserve Bank, 45 F., (2) 511.

It is the presence of a federal question which determines the jurisdiction. When such a question forms an ingredient in the original cause it is removable, even though there are other questions of fact and law involved.

New Orleans vs. Mississippi, 102 U. S. 135;
Omaha Horse Railway Co. vs. Cable Tramsway Co., 32 F., 729;
See also, Texas Pipe Line Co. vs. Ware, 15 F., (2) 171.

The motions challenging jurisdiction and to remand may be overruled.

WM. H. ATWELL,
United States District Judge.

At Wichita Falls, Texas, March 30th, 1937.

184 ORDER OVERRULING MOTION TO REMAND.

Filed & Entered March 30, A. D. 1937.

(Title Omitted.)

This Day came on to be heard the second motion to remand filed herein by the Wichita Royalty Company and E. E. Scannell, cross-complainants, the cross-complainants, Wichita Royalty Company and E. E. Scannell, appearing by their attorney, Guy Rogers; the defendant J. T. Harrell appearing by his attorney, T. R. Boone; and the plaintiff and the interpleaded defendants appearing by their attorneys, Tarlton Morrow and Leslie Humphrey, and said motion being duly argued and submitted to the Court, and the Court having duly considered the same and having filed written opinion herein, and being fully advised in the premises, said motion challenging the jurisdiction of this Court and to remand is hereby overruled, and said motion is therefore in all things overruled and denied.

The cross-complainants, Wichita Royalty Company and E. E. Scannell, its Trustee, duly excepted to said
185 order overruling and denying said motion to remand, which exceptions are hereby allowed and entered.

WM. H. ATWELL,
United States District Judge.

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186 WICHITA ROYALTY COMPANY'S ANSWER TO CITY NATIONAL BANK'S REPLEADED BILL OF COMPLAINT.

Filed in U. S. District Court March 27, 1937.

(Title Omitted.)

At a time when their first plea to this Court's jurisdiction and motion to remand has been overruled, with ex-

ception allowed and entered, and at a time when there is pending a second plea to the Court's jurisdiction and motion to remand, but without prejudice to their reserved right to be heard upon such second plea to the jurisdiction and motion to remand. come now Wichita Royalty Company, a joint stock association, and E. E. Scannell, herein called Respondents, and with leave of the Court first had and obtained, amend their pleading herein so that their answer to the amended Bill of Complaint filed herein by City National Bank of Wichita Falls and E. A. Deaton, its liquidating agent shall be as follows:

I.

Respondents say that the causes of action asserted by Complainant Bank against these Respondents are wholly between citizens of Texas, that they involve no federal question and are not such suits as are within the jurisdiction of this Court, and should be dismissed or remanded to the State Court, for which prayer is respectfully made.

II.

Answering paragraph I of said Bill of Complaint, Respondents admit the facts therein alleged, other than the residence of the Humble Oil & Refining Company, the Continental Oil Company, and the Texas Company, concerning which Respondents have no information and therefore deny the residences of such corporations to be other than in Texas. Respondents further say that Complainant Bank is in voluntary liquidation with E. A. Deaton, its liquidating agent, pursuant to the vote of stockholders of said Bank; Respondents further say that E. A. Deaton is not an officer of the United States.

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III.

Replying to Paragraph II of Complainant's Bill, Respondents deny that this Honorable Court has jurisdiction

to hear and determine the suits alleged by Complainant; but admit the Complainant Bank to be a national banking association in voluntary liquidation by vote of its stockholders; admit that E. A. Deaton is the liquidating agent of said bank by vote of its stockholders; but deny the suit to be one for winding up the affairs of the City National Bank of Wichita Falls, Texas.

Respondents admit the suit to be of a civil nature, but deny its being or arising under the Constitution and laws of the United States, of which the District Courts of the United States are given original jurisdiction; deny that it is a suit brought upon and which involves the construction of Section 91, Title 12 of the United States Code Annotated, with reference to the validity of a transfer of notes, bonds, bills of exchange, and other evidence of debt owing to the Complainant herein, the City National Bank of Wichita Falls, and of deposits to its credit and the assignments of mortgages and securities on real estate and deposits of money heretofore made by the Complainant City National Bank of Wichita Falls, Texas, to the interpleaded defendant City National Bank in Wichita Falls, made such in the cross-action of the
188 Wichita Royalty Company against the City National Bank in Wichita Falls pursuant to a contract and assignment dated the 15th day of March, 1933, executed by the City National Bank of Wichita Falls and the City National Bank in Wichita Falls; and Respondents assert that Complainant's suit against Respondents is but for debt and does not involve the winding up of a national banking association; does not involve a federal question; does not arise under the Constitution and laws of the United States, and does not involve the construction of, nor is it bottomed upon Section 91 of Title 12 of the United States Code, or any other federal law.

IV.

Replying to Paragraph III of Complainant's Bill, Respondents say that Wichita Royalty Company is a joint

stock association, with sole management and control vested in a trustee who is now E. E. Scannell, and that there are certain certificate holders not residing in Texas, but Respondents say that such certificate holders are amenable to processes of law and have been since Complainant's cause of action arose and are personally liable for the payment of any debt due the Complainant by the Respondents.

V.

Replying to Paragraph IV of Complainant's Bill Respondents say that on June 26, 1930, E. E. Scannell, as trustee of Wichita Royalty Company, signed the note described by Complainant; admit that the note is in extension and renewal of notes theretofore executed by G. W. Peckham when he was trustee of said company; deny that E. E. Scannell, during the trusteeship of G. W. Peckham, was secretary-treasurer of Wichita Royalty Company; admit that said note has not been paid except in the manner and to the extent hereinafter specifically pleaded; deny it to be a valid debt and obligation of Wichita Royalty Company and its trustee.

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Further replying to Paragraph IV of Complainant's Bill, Respondents deny that it is indebted to the Complainant Bank upon the balance of a promissory note dated June 9, 1930, executed by Texas Investment Company and payable to the order of Complainant Bank; deny such note to have been duly and legally endorsed by Respondents, but admit its endorsement by J. T. Harrell and J. A. Kemp; deny that there was any consideration supporting the indorsement of Wichita Royalty Company's name thereon and affirmatively say that the trustee was without power or authority to bind his trust by indorsing the commercial paper of the corporate principal; admit that such note was secured by a pledge of certain collateral sold by Complainant bank; deny that Respondents are indebted to complainant for any part of the deficiency.

VI.

Replying to Paragraph V of Complainant's Bill, Respondents say that it does have sufficient assets and has had sufficient assets to pay all of its just obligations; that the thirteen hundred shareholders of Wichita Royalty Company are solvent and, under the laws of the State of Texas where the rights of the parties accrued, and under which law such rights are determined, there exists a personal liability of the stockholders of Wichita Royalty Company for the payment of such debts; Respondents therefore deny that complainant must look alone to the properties of said trust for the satisfaction of any debts determined to be due it by Wichita Royalty Company.

VIII.

Replying to Paragraph VI of Complainant's Bill Respondents deny that the Declaration of Trust
190 and Articles of Association create a trust for the benefit of creditors of Wichita Royalty Company. With respect to the subdivision of said Paragraph, Respondents reply:

(A) Respondents admit that the trustee shall hold the funds and properties in trust for the purposes and with the powers and limitations set out in the Declaration of Trust;

(B) That the affairs of the Association shall be managed by one trustee; that title to all property acquired or to be acquired shall be held in trust in the name of the trustee as such trustee, with exclusive power and authority of management within, but not beyond the scope of the business entrusted to the trustee, namely, the purchase and sale of oil and gas royalties and other oil and gas properties;

(C) Respondents admit the Declaration of Trust does provide substantially as alleged in this subdivision;

(D) Respondents admit the articles of association contained other provisions; that it provides for a capital stock of $1,000.00; that certificates of beneficial ownership should be issued to shareholders; but deny that the assets of the association should be impressed with a trust and lien for the payment of all obligations of the trust estate; Respondents deny that the Declaration of Trust contains any provision, the effect of which was to create for the benefit of the creditors of the association, especially in the case of insolvency, a trust fund upon all of the assets of the association, and deny that it was the duty of the trustee to treat the same as a trust fund for the benefit of creditors ratably and alike and to suffer preferential transfers or payments, and deny that it would be an act of bad faith on the part of the trustee to treat the assets of the trust in a manner other than as a trust fund for the ratable benefit of creditors. In this connection Respondents say that, unlike a corporation,
191 the assets of Wichita Royalty Company are not alone available to pay its debts, in that Wichita Royalty Company was created under and existed by virtue of the laws of the State of Texas, and that the stockholders of Wichita Royalty Company under the laws of Texas, were jointly and severally liable for the payment of all just debts.

Respondents deny that the indebtedness herein sued for is an indebtedness incurred by the trustee in the management and conduct of the business of the trust and pursuant to Articles of Agreement aforesaid.

VII.

Replying to Paragraph VII, Respondents deny that the trustee has diverted the properties and proceeds of the trust in an effort to defeat all ultimate liability herein; deny that the properties and funds of the trust have been used for any purpose other than authorized trust pur-

poses; admit properties owned by Wichita Royalty Company are in part producing oil royalties; deny that the income therefrom should be applied to the payment of Complainant's alleged indebtedness; deny that such funds and the income therefrom have been so used as to hinder, delay and defraud the Complainants; deny that the assets and moneys of the trust, less such part thereof as has been reasonably and necessarily expended, will not be forthcoming for the satisfaction or the payment of any just debt.

IX.

Replying to Paragraph VIII of said Bill of Complaint, Respondents admit the ownership of the properties therein described and their value; admit receiving some income therefrom, but allege that most of such income has been impounded by the corporate defendants herein; admit the execution of a mortgage as security for
192 reasonable and necessary expenses incident to this litigation, and say that such funds as have been received under the terms of such mortgage have been used for authorized trust purposes.

Respondents admit their ownership of other royalties in the state of Texas, and admit their ownership of some of the properties scheduled in Exhibit B attached to Complainant's Bill, but say that during the trusteeship of G. W. Peckham he was personally interested in transactions whereby properties were sold to his trust, which transactions Respondents have sought and seek to repudiate and to declare invalid and not binding, and to that extent and as disclosed by Respondents' Cross Bill of Complaint they deny the ownership of properties tendered back, including:

The mineral interest in B. R. I. R. 39, J. E. Dowdle survey, Abst. 2215, in Young County, Texas; being Item 12 in Complainant's Bill;

Item 2 in Complainant's Bill, being 1/16 of 1/8 royalty in Blk. 46, Meade's L M Pasture subdivision of the Thomas Survey, Abst. 458 in Archer County, Texas;

Item 3, being 1/16 of 1/8 royalty in Blk. 9 of Crawford Pasture Subdivision of the Isaac Holman survey in Archer County, Texas.

Item 5, being an undivided 1/8 interest in 170 acres in Archer County known as the Porter Ranch;

Item 1, being 1/32 royalty in the E. 30 acres of a 71-acre tract of the Milligan survey, Callahan County;

Item 1 of Wilbarger County properties, being a royalty in the S. 40 acres of the North 60 a of the W. 1/2 of the N. E. 1/4 of Sec. 83, Blk. 14, H. & T. C. Ry. Co. survey in Wilbarger County; and

Hartley County Item No. 1, being a 1/16 royalty of Section 54, Hartley County, Texas.

In this connection Respondents say that the properties listed above have been disclaimed by Respondents in an offer to do equity in seeking to recover against Complainant and Wichita Royalty Company's former trustee in an accounting wherein the acts and conduct of the former trustee, G. W. Peckham, in selling as an individual to himself as trustee certain properties, and such former trustee's causing the trust books to show the trust's ownership of properties which it never acquired, all of which more fully appears in a Cross Bill filed in this suit by Wichita Royalty Company against Complainant and others. It is the intention of this denial to admit the ownership of such properties as Wichita Royalty Company claims title to, but to deny ownership as to such properties which in its Cross Bill it seeks to repudiate.

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X.

Replying to Paragraph IX, the Respondents deny the execution of the Deed of Trust pursuant to a plan to defeat the ultimate payment of this liability and affirmatively say that the Deed of Trust was executed for the purpose of securing Chas. L. Black in the payment of a reasonable attorney's fee and the payment to Guy Rogers of such expenses to which he might be put both in the prosecution of Respondent's Cross Bill herein, and defense of Complainant's suit. Respondents say that said Deed of Trust did not describe any specific properties, but described such properties in the State of Texas as were owned and claimed by Wichita Royalty Company, it being intended by the trustee in the execution of such Deed of Trust to give a lien only upon such properties as it claimed to own and not to assert title to or execute a lien upon properties which it had or could repudiate as not being binding upon the trust by reason of the personal interest in its acquisition by the former trustee G. W. Peckham. Respondents deny that they gave to Guy Rogers an assignment of all oil and gas and the proceeds thereof produced from Texas properties.

XI.

Replying to Paragraph X of said Bill of Complaint, Respondents admit the execution of the trustee's deed to Guy Rogers, trustee, but deny that such properties were at the time of the alleged value of $20,000.00.
194 Respondents say that at the time of the trustee's sale the Complainant Bank had obtained judgment against Wichita Royalty Company in excess of $40,000.00 in this cause, then pending in the State Court, had abstracted its judgment in the several counties of Texas, had levied upon and had bought at sheriff's sale the Gray and Wheeler Counties properties and expressed an intention to sell at foreclosure sale all of the assets of

Wichita Royalty Company. The Gray and Wheeler Counties properties were originally of little or no value, but subsequent to judgment and prior to the removal of this cause to the Federal Court, such properties did become valuable and are now worth in excess of the $20,000.00 which Complainant Bank alleges them to be worth.

The purchaser at trustee's sale took legal title to such of the properties as it might ultimately be determined were owned by Wichita Royalty Company, intending to hold such title as security for the $250.00 paid Chas. L. Black for the account of Wichita Royalty Company upon a lawful debt, and to reconvey to the Wichita Royalty Company the legal title at such time as Wichita Royalty Company had paid the indebtedness described in the Deed of Trust. Upon the properties' becoming valuable and it appearing to the best interest of the Royalty Company to claim rather than continue its prior repudiation of the Gray and Wheeler Counties, Texas, properties, the purchaser at such trustee's sale released and relinquished any right or claim thereto and caused the same to be filed for record.

XII.

Replying to Paragraph XI of said Bill of Complaint, Respondents deny that the sale and foreclosure was for the purpose alleged, but was for the purpose shown in the preceding paragraph.

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XIII.

Replying to Paragraph XII of said Bill of Complaint, Respondents deny that at any of the times mentioned by Complainant Bank, the assets of Wichita Royalty Company were inadequate to pay its indebtedness, and say that it has been and is able and has sufficient assets with which to discharge its every legal liability. Respondents

deny the applicability of the trust fund doctrine to a joint stock association whose individual shareholders are jointly and severally liable for the indebtedness due by the association. Respondents say that the mortgage, assignment, and Deed of Trust were given for value received and are valid securities for the indebtedness secured thereby.

XIV.

Respondents admit the allegations of fact contained in Paragraph XIII of Complainant's Bill.

XV.

Replying to Paragraph XIV of Complainant's Bill, Respondents admit that originally it sought to avoid its ownership of the Gray and Wheeler Counties properties, and sought to recover the purchase price paid therefor because of the personal interest therein of the former trustee, but since such properties are now worth in excess of the purchase price paid, Wichita Royalty Company has elected to retain and claim the title thereto.

XVI.

Replying to Paragraph XV of said Bill of Complaint, Respondents admit that the three oil companies named are purchasing oil from the properties alleged.

XVII.

Replying to Paragraph XVI of said Bill of Complaint, Respondents deny the existence of payments or other fact sufficient to create an equitable lien in favor of the Complainant upon the assets of Wichita Royalty
196 Company; deny Complainants to be entitled to an equitable lien upon any of the properties of Wichita Royalty Company, and deny Complainant's right to have the trustee's deed canceled in that, as above alleged, a release has been filed of record.

## XVIII.

Respondents are without sufficient information and knowledge to make reply to the averments of fact set out in Paragraph XVII of Complainant's Bank's Bill of Complaint and therefore neither admit nor deny such allegations, which allegations deal with and relate to transactions between the Complainant Bank and the City National Bank in Wichita Falls.

However, with respect thereto Respondents say that such averments form no proper part of the Bill of Complaint in that the Complainant Bank declares upon one note and the indorsement of another, and seeks relief against Respondents thereon, and transactions had with strangers to such transactions are immaterial either in support of or as a defense to the rights of Complaint to recover thereon, such averments stating no equity germaine to Complainant's suit upon such notes and should be stricken, for which prayer is respectfully made.

## XIX.

Replying to Paragraph XVIII of Complainant's Bill, Respondents say that they did file the suit against the Complainant Bank and the others alleged, claiming the indebtedness pleaded, attacking as fraudulent the transactions between the old and the new banks as being invalid to the extent that the new bank and others were preferred as creditors during the insolvency of the old bank, there asserting that upon the insolvency of the old bank its assets became a trust fund for the ratable benefit of all of its creditors and that the new bank and
197 the directors of the old had become preferred and had received substantial assets of an insolvent corporation. Respondents deny, however, that they sought and asked for the winding up of the affairs of the City National Bank of Wichita Falls; they admit the filing

of notice of Lis Pendens, as alleged, but deny that its filing has rendered impotent the power of the liquidating agent orderly to liquidate the assets of the old bank, alleging that its filing only prevents to some degree the liquidating agent's preferring creditors to the prejudice of Respondents. They deny that it becomes necessary in this action to wind up the affairs of the City National Bank of Wichita Falls, and deny that it is necessary in this proceeding to inquire into the validity of all transactions between the two banks except to the extent such may be appropriate under the Bill of Cross Complaint filed herein separate and apart from this answer.

Respondents deny that the transfers made by the Complainant Bank, The City National Bank of Wichita Falls, were valid and legal and without legal fraud, but say that such averment of Complainant Bank and other averments of a kindred nature are not germaine to any matter properly a part of the Bill of Complaint upon a promissory note and the indorsement of another, alleging that such averments should be stricken as stating no equity, for which prayer is made.

Respondents deny any indebtedness to the Complainant Bank, deny that said Bank has a valid equity lien upon any of the assets of Wichita Royalty Company; they are without information as to the ownership of the causes of action asserted by Complainant Bank and therefore neither admit nor deny the allegations with respect thereto.

Respondents are without information and knowledge sufficient to answer the allegations with respect to the powers and desires of the liquidating agent and
198 therefore neither admit nor deny the allegations with respect thereto.

XX.

The $22,000.00 note sued on by Complainant Bank was but in renewal of a $15,000.00 note dated January 16,

1926, and a $25,000.00 note dated March 1, 1926. Each loan was negotiated by G. W. Peckham, former trustee of Wichita Royalty Company, through J. T. Harrell, chief executive officer of Complainant Bank. G. W. Peckham was the joint maker of the original $25,000.00 note. These original loans were made at the times, in the manner, under the circumstances, and for the purposes hereinafter shown.

XXI.

Further pleading with respect to Complainant Bank's suit upon the indorsement of Texas Investment Company's note, Respondents say that they received no consideration for such indorsement, the signing trustee was wholly without authority to bind the trust by such indorsement, the powers of the trustee were limited to dealing in oil and gas royalties and other oil and gas properties under the requirement that the title thereto be taken in his name as such and by him managed, operated and controlled. Such trustee had no power or authority to accept stock in the Texas Investment Company whereby management of that part of the business was entrusted, not to the trustee as such, but to the Board of Directors of a corporation not engaged in the oil and gas business.

Respondents further say that G. W. Peckham acquired title in his own name and with his own funds to an original interest in Marlborough Addition and held, used, occupied, and possessed the same and exercised dominion thereof and claimed title thereto during his life, having prior to his death joined other parties at interest in a conveyance with covenants of warranty of all of the assets of Marlborough Addition to Texas Investment Company, a corporation, which corporation became an innocent purchaser for value of the title to said assets that stood of record in the name of G.

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W. Peckham by whom they were conveyed to the corporation.

Respondents further say that Complainant Bank first sued upon such indorsement in the State Court and litigated the matter to an adverse decision before the Supreme Court of Texas, with a decision reached and mandate issued directing the Trial Court to exonerate Respondents from liability by reason of such indorsement, the law of the case being fixed and determined to be that the Respondents are not liable on such indorsement.

Agreeable to and in conformity with said mandate, Complainant Bank discontinued its suit in the State Court of any alleged cause of action upon such indorsement and by amendment filed in the State Court prior to removal, omitted from such amendment any suit upon such indorsement. The present suit was first filed in this Court after its removal from the State Court and more than four years elapsed between the maturity of said obligation and the filing of suit thereon, and such cause of action is wanting in consideration, is not supported by authority in the trustee to have obligated Respondents thereon, is barred by limitation, and is unforceable by reason of laches, stale demand, and the law of the case is fixed and determined and adjudicated by the Supreme Court of Texas.

XXII.

Respondents further say with respect to the $22,000.00 note declared upon by Complainant Bank that suit thereon was first filed in the State District Court and there litigated to an adverse decision in the Supreme Court of Texas, which Court remanded such cause of
200 action for the purpose of ascertaining to what extent, if any, the proceeds of the 1926 loans in renewal of which the present note was executed, were

used for authorized trust purposes and as above shown, such proceeds were not so used for authorized trust purposes and upon crediting the 1926 loans with the amount thereof subsequently paid by the trust, together with the amount thereof used for unauthorized trust purposes, leaves nothing due thereon and Complainant Bank is not entitled to recover any amount.

In further reply Respondents here adopt the allegations of all other pleadings filed herein by Wichita Royalty Company and E. E. Scannell, trustee, the same by reference as though copied herein.

Wherefore, having fully answered, Respondents make the following alternative prayers, each pleaded in the order named:

1. That Complainant's suit be dismissed or remanded to the State Court whence it was removed by the Bank which brought the suit in the State Court;

2. That Complainant take nothing against the Respondents and that the Respondents be discharged of liability, and that they recover their costs herein incurred.

KILGORE & ROGERS,
(Signed) By GUY ROGERS,
Attorneys for Wichita Royalty Company and its Trustee.

The State of Texas,
County of Wichita.

E. E. Scannell, being sworn, upon oath says that the facts stated in the above answer are true.

(Signed) E. E. SCANNELL.

201 Sworn to and subscribed before me this, the 26th day of March, A. D. 1937.

(Signed) GRACE JARNAGAN,
(Seal) Notary Public, Wichita County, Texas.

202 ANSWER OF CHARLES L. BLACK AND GUY ROGERS.

Filed March 27, 1937.

(Title Omitted.)

Come now Charles L. Black and Guy Rogers, and, without waiving special plea to the jurisdiction of this Court and motion to strike by way of plea in abatement, and expressly reserving their right to be heard thereon and in reply to the complaint filed herein, adopt as their reply thereto the answer and cross-action of Wichita Royalty Company against the City National Bank of Wichita Falls.

In further answer thereto these Respondents say that they are the beneficiaries in the instruments alleged by Complainant Bank to have been executed by Wichita Royalty Company, such instruments being intended but to cover such properties as were claimed and owned by Wichita Royalty Company and not repudiated by it, and to secure Charles L. Black in the payment of $5,000.00, or so much thereof as is equivalent to reasonable compensation for his professional services as an attorney in this cause prior to final judgment and to secure Guy Rogers in the payment of such reasonable expenses as he might incur for and on behalf of Wichita Royalty Company in the prosecution and/or defense of this law suit, as appears among the papers of this case.

These Respondents say that such instruments were given as security for future items of indebtedness and constitute valid and subsisting liens upon said respective properties to secure said respective beneficiaries in the ultimate payment to them of such an amount as
203 may be due at the final adjudication of the matters herein at issue. They therefore say that it can not be now determined the exact amount that will become due and payable under the terms of said instru-

ments, but that a present accounting should be had to determine the several amounts due thereunder to these respective parties, that said lien be fixed and determined as valid security therefor, as well as for such other and further future sums as arise prior to the final judgment in this controversy.

These Respondents respectfully allege that this Court is without jurisdiction to hear and determine the matters against them raised by the Complainant Bank herein and that this Court should have and take no further jurisdiction in the matter, but should strike the allegations against these Respondents.

Wherefore, prayer is made that the validity of said liens created by the execution of the instruments alleged by the Complainant Bank be fixed and determined as superior to any right, claim or asserted lien by the Complainant Bank, that said respective liens be fixed, adjudicated and preserved, and for general and special relief.

KILGORE & ROGERS,
By GUY ROGERS,
Attorneys for Respondents, Charles L. Black and Guy Rogers.

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204 DISCLAIMER OF GUY ROGERS, TRUSTEE.

Filed March 27, 1937.

(Title Omitted.)

Guy Rogers, as trustee under the will of L. B. Rogers, deceased, disclaims any interest in the subject matter of this litigation, and disclaims any interest in any of the properties therein described, and says that as such trustee he became the purchaser at trustee's sale of certain mineral interests, but that such legal title so taken was but in trust for Wichita Royalty Company, a release and relinquishment having been subsequently filed for record.

Wherefore, prayer is made by such Trustee that he be discharged herein as such with his costs.

GUY ROGERS,
Trustee under the will of L. B. Rogers, deceased.

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205 WICHITA ROYALTY COMPANY'S REPLEADED CROSS BILL OF COMPLAINT, CROSS ACTION AND INTERPLEADER AGAINST CITY NATIONAL BANK, ET AL.

Filed in U. S. District Court Dec. 12, 1936.

(Title Omitted.)

At a time when their first plea to this Court's jurisdiction and motion to remand has been overruled with exceptions allowed and entered, and at a time when the Court has directed their filing recasted pleadings within ten days from December 3, 1936, but without prejudice to their reserved right to file a second plea to this Court's jurisdiction and motion to remand, come now Wichita Royalty Company, a joint stock association, existing under and by virtue of the laws of the state of Texas, a citizen of Texas, with recorded declaration of trust in Wichita County, Texas, and E. E. Scannell, its trustee, and a citizen of Texas, hereinafter called Cross-complainants, and recast their pleadings herein so that the cause of action hereinafter stated against the cross-defendants and impleaded defendants hereinafter named, shall be as follows:

I.

Cross-complainants say that the cause of action herein asserted was first asserted in the District Court of Wichita

County, Texas, and that the plaintiff bank answered thereto and litigated the matters thus joined to the adverse decision of the Supreme Court of Texas, the plaintiff thereafter filing a petition and bond to remove the same to this Court, the suit being wholly between citizens of Texas, no Federal question being involved, and the suit being not otherwise within the original jurisdiction of this Court.

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Wherefore, said cause of action should be remanded to the State Court whence it came, for which prayer is respectfully made.

II.

Wichita Royalty Company and E. E. Scannell, its trustee, now complain of the City National Bank of Wichita Falls, J. T. Harrell, Trustee, and E. A. Deaton, Liquidating Agent, and of W. H. Peckham, Administrator of the estate of G. W. Peckham, deceased, Hazel Peckham, surviving wife of G. W. Peckham, deceased, William Peckham, and George Peckham, minors, and Robert Peckham, sole surviving children of G. W. Peckham, deceased, and Texas Investment Company, a dissolved corporation that was and is a citizen of Texas.

III.

Cross-complainants would show that Wichita Royalty Company is a joint stock association with E. E. Scannell its trustee, said association being organized and existing under the laws of the state of Texas, with a recorded declaration of trust in Wichita County, Texas, which defines the duties and privileges of the trustee and limits such trustee, whose dealings are solely and only in oil and gas royalties and other oil and gas properties, requiring the title to all property to be held in the name of the trustee as such trustee, and forbidding the use of the trust property for the personal advantage or private use of the trustee.

IV.

That E. E. Scannell is the present duly qualified and acting trustee of said association, succeeding G. W. Peckham as such trustee, who became such trustee in January, 1923, and continued as such until his death in
207 November, 1929.

V.

Cross complainants say that the City National Bank of Wichita Falls, Texas, is a National banking institution, and citizen of Texas with its principal office and principal place of business in Wichita County, Texas, with J. T. Harrell, its President, who has at all times material to this controversy, been the chief executive officer of said bank.

VI.

That E. A. Deaton is the Liquidating Agent of said plaintiff bank, pursuant to appointment as such agent by the stockholders of said corporation. He is not an officer of the United States, being but an agent of the plaintiff bank.

VII.

That J. T. Harrell, Trustee, is such trustee pursuant to the action of the stockholders and directors of the plaintiff bank whereby in 1933 there was placed in his possession as such trustee all of the assets of such corporation, and who now has in his constructive possession all of the assets thereof.

VIII.

That W. H. Peckham, administrator of the estate of G. W. Peckham, deceased, and Robert Peckham are each citi-

zens of the state of Texas, and that Hazel D. Peckham, William Peckham and George Peckham, the remaining heirs of G. W. Peckham, deceased, are resident citizens of the state of Colorado. That the Texas Investment Company, a dissolved corporation, was and is a citizen of the state of Texas.

IX.

That all parties to the controversy herein set out are citizens of the state of Texas, except Hazel D. Peckham, William Peckham, and George Peckham, who
208 are citizens of the state of Colorado, and the rights of the parties with respect to the matters herein pleaded, are determinable by the application of the law of the state of Texas, particularly such law so established as the law of the case by the Supreme Court of Texas in that this suit was originally filed in the District Court of Wichita County, Texas, by Cross Complainants against the plaintiff bank, and the matters litigated therein through the decision by the Supreme Court of Texas, as reflected by such Court's mandate on file among the papers in this cause, to which reference is made for all purposes.

X.

That upon G. W. Peckham's becoming trustee of Wichita Royalty Company, he did business with the plaintiff bank as an individual and as trustee, carrying a deposit and liability account of his own as well as a deposit and liability account in the name of Wichita Royalty Company.

XI.

That the amount of trust monies deposited by Cross Complainants with plaintiff bank exceeds by $200.000.00 the monies withdrawn therefrom upon authority of

Wichita Royalty Company and prayer is made that said deposit balance of said $200,000.00 be fixed and determined as said bank's deposit liability to Wichita Royalty Company.

XII.

That at all times the plaintiff bank, its officers, agents and employees, knew each and every fact herein elsewhere pleaded, and were charged by law with knowledge thereof upon and under such facts so averred.

XIII.

The declaration of trust creating Wichita Royalty Company and which in and of itself was and is the charter of the Trustee's power, gives to the trustee there-
209 under general authority but to carry out the purposes of the trust, shown by the articles of agreement to be solely and only the purchase and sale of oil and gas royalties and other oil and gas properties. It is therein provided that the title to all property acquired or to be acquired from time to time by the trust and all investments thereof should be made and held in the name of the trustee as such, and that the trustee shall hold all of the funds and property of the trust as trustee with the powers and subject to the limitations declared in the declaration shown to limit the powers of the trustee to dealing in oil and gas business.

XIV.

During G. W. Peckham's trusteeship he was likewise extensively engaged in private business. During said period of time said trustee used trust funds for non-trust purposes, for his personal benefit and individual profit, commingling trust funds with his own, seeking to destroy, and did destroy evidence of the trust's title to property

in violation of the express inhibition of the declaration of trust, colluded with the bank and its officers to accomplish the misappropriations hereinelsewhere set out, made payments to such parties upon his private debts with trust funds, known to be by the payee a payment of a private debt out of trust funds, traded and trafficked with himself as an individual and himself as trustee, and in such dual dealings profited personally therefrom with participation therein by the bank with notice of the trustee's breaches of trust, caused records transfers of trust funds to be made from the trust account to his personal account without any consideration moving to the trust therefor, the bank and its active officers knowing and participating therein and the peculations of the trustee being accomplished through the facilities of the bank and its active participation in breaches of trust
210 by G. W. Peckham, whereby and because of which said trustee and said plaintiff bank, from time to time, caused the bank's books to reflect transfers of monies from the trust account to G. W. Peckham's personal account and payments made therefrom to the bank, to its officials, and to third parties, no account having been made thereof between the parties hereto, but as a result of an accounting thereof the trustee's misappropriations will be shown to have been $200,000.00 and that such misappropriations were accomplished through the facilities and with the active participation therein by plaintiff bank, its officers, agents and employees.

XV.

All checks drawn by said trustee against the trust account were upon voucher form. One check is here now reproduced as an example of all. That which is underscored was written into the printed form of the check:

Remittance Advice.

Attached hereto is our check in full settlement of the items listed below. If not correct please return with explanation.

WICHITA ROYALTY COMPANY.

| Description | Detail | Total |
|---|---|---|
| *Notes Payable:* | | |
| *To apply on note held by City National Bank* | | *$1,500.00* |

Detach here before depositing check.

..... (Perforation) .....

Wichita Royalty Company,
Wichita Falls, Texas.

*August 16, 1927.* *No. 535.*

When Properly Indorsed Pay to the Order of *City National Bank* $1,500.00, *Exactly One Thousand Five Hundred Dollars No Cents.*

WICHITA ROYALTY COMPANY.
By *G. W. PECKHAM*, Trustee.

To The City National Bank,
Wichita Falls, Texas.

On the back of checks as and when presented and above the place of usual indorsement were printed these words:

"Indorsement hereon by the payee constitutes acknowledgment of full payment of the items listed on accompanying remittance statement. No other receipt is required."

XVI.

These checks were deposited by the bank to the personal account of the drawing trustee, and a corresponding charge made against the trust deposit, the bank well

knowing that the fund was a trust fund and was being improperly diverted from the trust account to the personal account of the trustee of such fund by being deposited to the credit of an account which the bank knew G. W. Peckham was using solely for personal purposes.

## XVII.

There now follows a partial list of checks drawn upon the trust deposit with the plaintiff bank, wherein is given the check number, the date, the amount, the payee, to whom credit was given, and voucher notation, each item being charged to have been an accomplished misappropriation of trust funds by the trustee through the facilities and upon the active participation of plaintiff bank, to-wit:

| Check No. | Date | Amount | Payee | Credit Given | Voucher Notation |
|---|---|---|---|---|---|
| 427 | 10- 8-25 | $ 5,500.00 | Bank | Peckham | Purchase royalties |
| 451 | 12-28-25 | 1,250.00 | Bank | Peckham | Producing royalties |
| 452 | 1- 4-25 | 5,000.00 | Peckham | Peckham | Producing royalties |
| 458 | 1-11-26 | 5,000.00 | Bank | Peckham | Producing royalties |
| 461 | 3- 6-26 | 15,769.07 | Bank | Peckham | Stephens Royalty |
| 478 | 3- 6-26 | 17,623.70 | Bank | Peckham | Marlborough Purchase |
| 479 | 3- 6-26 | 6,000.00 | Security | Peckham | Marlborough Purchase |
| 485 | 3-31-26 | 7,500.00 | Bank | Peckham | Marlborough Imp'mnt. |
| 495 | 3-23-26 | 300.00 | Bank | Note | Interest to Bank |
| 503 | 5-20-26 | 3,000.00 | Peckham | Peckham | Marlborough Imp'mnt. |
| 506 | 5-29-26 | 500.00 | Bank | Note | Interest to Bank |
| 507 | 5-29-26 | 1,500.00 | Bank | Peckham | Marlborough Imp'mnt. |
| 510 | 6-16-26 | 4,500.00 | Bank | Peckham | Marlborough Imp'mnt. |
| 519 | 7-13-26 | 1,000.00 | Bank | Peckham | Marlborough Imp'mnt. |
| 521 | 7-16-26 | 300.00 | Bank | Note | Interest to Bank |
| 525 | 8- 2-26 | 4,000.00 | Bank | Peckham | Highland Ir. Co. Note |
| 531 | 8-27-26 | 500.00 | Bank | Note | Interest to Bank |
| 532 | 8-27-26 | 4,357.58 | Bank | Peckham | Highland Ir. Co. Note |
| 540 | 10-13-26 | 300.00 | Bank | Note P | Interest to Bank |
| 550 | 11-20-26 | 7,500.00 | Bank | Peckham | Purchase royalties |
| 554 | 12- 2-26 | 1,500.00 | Bank | Peckham | Royalties and fee |

| | | | | | |
|---|---|---|---|---|---|
| 556 | 12-26-26 | 700.00 | Peckham | Highland | Highland Ir. Co. Note |
| 556-A | 12-22-26 | 538.16 | Peckham | Highland | Highland Ir. Co. Note |
| 557 | 12- 7-26 | 1,920.00 | Bank | Draft | Purchase royalties |
| 569 | 1-11-27 | 300.00 | Bank | Note | Interest to Bank |
| 571 | 1-19-27 | 2,000.00 | Bank | Peckham | Marlborough Imp'mnt. |
| 579 | 2-19-27 | 2,500.00 | Bank | Peckham | Marlborough Imp'mnt. |
| 582 | 3- 1-27 | 500.00 | Bank | Peckham | Interest to Bank |
| 583 | 3- 1-27 | 301.82 | Bank | Peckham | Purchase royalties |
| 584 | 3- 1-27 | 500.00 | Bank | Note | Interest to Bank |
| 591 | 3-23-27 | 2,000.00 | Bank | Peckham | Purchase royalties |
| 599 | 4-14-27 | 300.00 | Bank | Note | Interest to Bank |
| 615 | 6- 8-27 | 500.00 | Bank | Note | Interest to Bank |
| 620 | 6-18-27 | 1,200.00 | Bank | Peckham | Note to Bank |
| 628 | 7-16-27 | 1,500.00 | Bank | Note | Interest to Bank |
| 635 | 8-16-27 | 1,500.00 | Bank | Peckham | Note to Bank |
| 650 | 10-14-27 | 2,400.00 | Bank | Peckham | Note to Bank |
| 657 | 11-25-27 | 1,800.00 | Bank | Peckham | Interest to Bank |
| 682 | 1-18-28 | 2,000.00 | Bank | Note | Note to Bank |
| 710 | 4-20-28 | 1,850.00 | Bank | Peckham | Note to Bank |
| 717 | 5-17-28 | 220.00 | Bank | Note | Interest to Bank |
| 721 | 6- 1-28 | 424.66 | Bank | Note | Interest to Bank |
| 733 | 7-23-28 | 220.00 | Bank | Note | Interest to Bank |
| 752 | 9-27-28 | 424.66 | Bank | Note | Interest to Bank |

| Check No. | Date | Amount | Payee | Credit Given | Voucher Notation |
|---|---|---|---|---|---|
| 768 | 12- 4-28 | 2,000.00 | Bank | Note | Note to Bank |
| 791 | 2-19-29 | 1,500.00 | Bank | Note | Note to Bank |
| 814 | 6- 7-29 | 1,500.00 | Bank | Note | Note to Bank |
| 824 | 7-15-29 | 212.49 | Bank | Note | Interest to Bank |
| 836 | 8-30-29 | 1,000.00 | Bank | Note | Note to Bank |
| 856 | 11-23-29 | 1,500.00 | Bank | Note | Note to Bank |
| 880 | 1-24-30 | 1,500.00 | Marlborough | Tex. Inv. Co. | Loan |
| 890 | 2-24-30 | 1,000.00 | Bank | Note | Note to Bank |
| 898 | 4-10-30 | 1,000.00 | Bank | Note | Note to Bank |
| 908 | 5-13-30 | 500.00 | Tex. Inv. Co. | Tex. Inv. Co. | Marlborough Note |
| 920 | 6-14-30 | 1,500.00 | Bank | Note | Note to Bank |
| 930 | 7-14-30 | 3,055.42 | Bank | Note | Note to Bank |
| Total | | $144,767.56 | | | |

XVIII.

Additional to the above, and as a further misappropriation, the Trustee, Peckham, sold two properties belonging to the trust and received therefor the aggregate of $12,048.00, $6,000.00 thereof being evidenced by cashier's check and deposited to the personal account in the plaintiff bank, of G. W. Peckham and by him used for his own personal benefit. The remaining $6,048.00 was
213 paid by the purchaser of the trust property under escrow contract between Wichita Royalty Company and the purchaser, deposited in the plaintiff bank as escrow agent, with executed conveyance to be surrendered to the purchaser upon the payment of $6,000.00 and interest, as evidenced in writing deposited with the plaintiff bank. The purchaser paid into the escrow the total of $6,048.00 by checks payable to the plaintiff bank, which the bank, well knowing the money to be trust money, deposited to the personal account of G. W. Peckham and which was by him misappropriated.

XIX.

During the period of time covered by the transactions above, the bank received from G. W. Peckham upon his personal indebtedness to it $57,764.21, said payments being made to the bank from the personal account of G. W. Peckham with the Bank to which the above funds had been credited, and but for the credit of which trust funds such payments could not all have been made, and at the very outset of the series of misappropriations, the defaulting trustee diverted trust funds from Wichita Royalty Company's account to his individual account so that he could, as he did, pay therefrom the bank upon his individual debt.

XX.

The perforation on each check, and the notation on the back thereof advised the bank that the check as and when presented was a voucher check and that attached thereto

when issued was a voucher upon which was written the purpose thereof, and the bank was thus referred to matters of writing wherefrom it affirmatively appeared that each of the several checks now declared upon was issued for other than a trust purpose, but a purpose personal to the Trustee and involved a transaction wherein the trustee was personally interested and in the con-
214 summation of which there was a breach of trust facilitated through the bank's charging the trust deposit and crediting the trustee's personal account.

XXI.

Each of the charges against the trust deposits and credits to the personal account of the drawing trustee was made at a time when the personal account of the trustee had been all but exhausted and he was indebted in large amounts to the plaintiff bank.

XXII.

The plaintiff bank's chief executive officer, J. T. Harrell, was during the period of these several transactions an active officer of plaintiff bank. He negotiated with G. W. Peckham certain loans hereinafter described; a substantially large part of his loans were first deposited to the trust account and therefrom diverted to the personal account of the drawing trustee so that such trustee, as an individual, might, as he did, pay to the loaning banker upon Peckham's personal debt, and so that the loaning banker might, as he did, pay therewith the bank upon his private debt, and so that the bank might, as it did, receive therefrom a portion of the proceeds of such loan upon the private debt of W. H. Peckham, and upon the debt of G. W. Peckham.

XXIII.

On January 1, 1926, G. W. Peckham and J. T. Harrell were business associates and good friends. The former

was trustee of the Wichita Royalty Company, and the latter was the chief active officer of the plaintiff bank: These men were partners in a large suburban venture, and joint owners of land known as the Curlee tract; likewise they owned an undivided interest in a producing property known as the Stephens Royalty, G. W. Peckham having acquired his interest November 3, 1925,
215 from J. T. Harrell and another bank officer, said J. T. Harrell owing the bank at that time $7,500.00 which indebtedness was increased on January 11, to $10,560.00, and again increased on January 18th to $15,574.44. G. W. Peckham owed the bank $28,050.00. He owed J. T. Harrell and an associate banker $5000.00, and interest, upon notes executed November 3, 1925. J. T. Harrell and G. W. Peckham were jointly and severally liable to Highland Irrigation Company upon vendor's lien notes for the purchase of the Marlborough partnership property, totaling $51,895.00 with interest. J. T. Harrell was G. W. Peckham's personal banker and the latter would have told the former any matter of thing with respect to his business that the former should have asked. It was the custom and practice of the banks and bankers generally and of the plaintiff bank in particular, to inquire as to the intended purpose for which the proceeds of a $15,000.00 to $25,000.00 loan would be used when an application therefor was made. Wichita Royalty Company was free of debt except current items. It owned valuable properties. It was not indebted to the bank.

XXIV.

In such a setting J. T. Harrell and G. W. Peckham negotiated the sale by J. T. Harrell and another of the bank's officers, of their remaining interest in the Stephens Royalty, whereby Wichita Royalty Company obtained the legal title to said interests and the agreed consideration being $20,000.00 plus G. W. Peckham's personal interest in the Curlee land, then of the agreed and reasonable value of $2,407.00.

XXV.

G. W. Peckham's personal balance at the beginning of business January 4th was $878.70. That day
216 he caused Trust check No. 452 to be drawn on the bank payable to his individual order for $5,000.00 which he that day deposited to his personal account. The next day he paid Highland Irrigation Company $812.00 upon the joint obligation of J. T. Harrell and G. W. Peckham, the check being drawn on the commingled account. From January 6th to January 11th, G. W. Peckham's commingled account consisted wholly of trust funds, and on January 11th he caused Trust check No. 458 to issue, drawn on and payable to the bank's order in the sum of $5,000.00 which he deposited to his private account and against which, and on the same day, he issued his check for $2,567.75 as his part of the joint purchase with J. T. Harrell and C. E. Basham of the Curlee land.

XXVI.

The next day, January 12th, at a time when G. W. Peckham's commingled account consisted wholly of trust funds, he issued his check to Highland Irrigation Company for $454.50 in payment on the joint obligation of J. T. Harrell and G. W. Peckham in their Marlborough partnership venture.

XXVII.

The fourth day thereafter, January 16th, Wichita Royalty Company's liability record with the bank was charged with $15,300.00, although the Trust did not get credit for the proceeds of such loan until January 18th.

XXVIII.

On January 16th, G. W. Peckham issued his check to J. T. Harrell and C. E. Basham for $2,201.32, drawn on

the commingled account, $1,362.87 of which consisted of funds theretofore transferred from the trust account.

XXIX.

The second day thereafter, January 18th, the day the trust received credit in its deposit account for
217 the $15,000.00 loan, G. W. Peckham caused Trust Check No. 461 for $15,769.07 to issue, payable to the bank's order and deposited in G. W. Peckham's personal account, noting for the first time in the records of the Royalty Company that such check, together with Checks Nos. 452 and 458 were in payment for an interest in the Stephens Royalty. G. W. Peckham's personal balance at the close of business January 18th of $18,765.87 was constituted wholly of funds transferred from the trust account.

XXX.

Thereafter, and before another deposit to his personal account, and when the account still was constituted wholly of transferred funds, G. W. Peckham on January 25th, issued his check to J. T. Harrell and C. E. Basham for $10,028.00 which check was that day charged against G. W. Peckham's commingled account. Half of the checks, or $5,014.00, was deposited to J. T. Harrell's account (personal) with the bank, at a time when on January 25th his personal account was $219.16, and his personal liability to the bank was $15,574.44. That same day, and with $4,827.71 of the funds transferred from the trust account to G. W. Peckham's account and then to J. T. Harrell's account, the banker who negotiated the January 16th loan from which the proceeds were derived, paid the bank upon his private debt the sum of $5,006.67, leaving his personal balance at the close of business January 25th, $186.29.

XXXI.

Three days later, January 28th, J. T. Harrell and C. E. Basham acknowledged deed of conveyance to Wichita Royalty Company, and the receipt of the consideration therefor which consideration J. T. Harrell testified was $20,000.00 plus G. W. Peckham's personal interest in the Curlee land, which J. T. Harrell testified was $2,407.00.

218 XXXII.

The effect of the above is this: J. T. Harrell, as an individual, sold a valuable property; as a banker, he loaned G. W. Peckham the money with which it was bought, the loan being made upon the credit of the royalty company, to which company the deed ran. G. W. Peckham, as an individual, disposed of his interest in the Curlee land for $2,407.00, paid and obligated himself to pay and later paid $20,000.00 in cash, and as trustee, G. W. Peckham charged his trust $25,769.07 for the property and made a private gain of $3,362.07. Then too, G. W. Peckham paid J. T. Harrell and C. E. Basham $10,028.00, which J. T. Harrell testified was G. W. Peckham's personal debt, and from J. T. Harrell's one-half thereof, deposited in the bank, J. T. Harrell paid the bank upon his private debt.

XXXIII.

On February 2nd, 1926, Trust Check No. 465 was deposited to G. W. Peckham's personal account for $400.00, on which day and against the commingled account, G. W. Peckham drew his check for $5,100.00 payable to J. T. Harrell and C. E. Basham, $2,550.00 being deposited in the bank to the account of each payee. Of the $5,100.00 so paid, the bank's officers, $3,074.15 was of the proceeds of monies transferred from the royalty account to G. W. Peckham's personal account. On February 13th, G. W. Peckham's personal liability to the bank was credited

with $550.00, and his commingled account charged therewith upon his personal check drawn thereon.

XXXIV.

On February 27, $400.00 was transferred from the Trust account to G. W. Peckham's personal account, and, on the same day, G. W. Peckham drew a check against the commingled account payable to the bank's order for $21,000.00. On the same day, J. T. Harrell paid the bank upon his personal indebtedness $10,000.00, but without additional records, we are unable to say what, if any, connection there is between these transactions.

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XXXV.

On March 1, 1926, G. W. Peckham owed the Bank $28,050.00 plus interest. His personal balance that morning was $341.90. J. T. Harrell then owed the bank $7,060.00. G. W. Peckham and J. T. Harrell were still jointly obligated upon the Marlborough indebtedness, in excess of $50,000.00. W. H. Peckham then owed the bank $6,120.00 and he was liable with J. T. Harrell and G. W. Peckham upon the Marlborough indebtedness.

XXXVI.

That day, March 1st, G. W. Peckham and J. T. Harrell concluded negotiations for a $25,000.00 loan, whereby the trust's note therefor was executed and its liability account charged with $25,500.00 additional, and its deposit account credited with $25,000.00. On the same day, March 1st, G. W. Peckham issued his check drawn on the commingled account payable to W. H. Peckham for $11,811.85 in payment to W. H. Peckham for his interest in Marlborough addition. On March 1st, G. W. Peckham's personal balance was $341.90 and his balance was insuf-

ficient to pay W. H. Peckham's $11,811.85 check until March 6th, on which day W. H. Peckham's personal balance of $225.20 consisted wholly of transferred funds itself, was increased $17,623.70 upon Trust Check No. 478 drawn on and payable to the bank's order, charged against the Trust fund, and deposited to the trustee's private account, the trustee causing the records to show the sale to his trust of one-half interest in the Marlborough partnership. That same day, March 6th, G. W. Peckham drew his check against the commingled account, consisting wholly of transferred funds, for $5,060.00 payable to the order of J. T. Harrell and C. E. Basham, one half of which was deposited to J. T. Harrell's account and the other half to C. E. Basham's account in the bank. On March 9th, W. H. Peckham's $11,811.85 check cleared and same was added to his then deposit balance with the bank of $518.52, and on the same day W. H. Peckham paid to the bank his entire indebtedness of $6,120.00 of all of which was paid with the proceeds of transferred funds except his beginning balance of $518.52.

220

## XXXVII.

Cross-complainants would show that G. W. Peckham was without authority to transfer any funds from the Trust account to his personal account and thus destroy the evidence of title to trust property required by the declaration of trust to be held separate and distinct from his personal property and that said trustee was wholly without power or authority to convey to or obligate the trust upon the debts of Marlborough addition and the trust received no benefit of any kind or character for the proceeds of those checks shown to have been applied for the purchase or improvement of the Marlborough addition, and if it be held that the bank's charge against the deposited account therewith depleted the deposit, then the bank is liable for their misappropriation.

XXXVIII.

The misappropriations were accomplished through the facilities of the bank and the active participation of its officers and agents upon checks for the most part made payable to the bank's order which checks were charged against the trust deposited account, credited to the personal account of the trustee, and therefrom by him diverted to purposes other than those of the trust, some to pay officers of the bank, some to pay the bank itself upon the personal indebtedness of the trustee, some to pay the bank the indebtedness due it by third parties,
221 some to pay into and some for the debts of the Marlborough partnership, and some to pay the personal obligations of the trustee.

XXXIX.

The trustee caused the trust books to reflect that many of such checks were issued for the purpose of the trust's acquiring royalties, but the trust books did not reflect that such royalties as were so acquired were transferred from the trustee as an individual to his trust, or from others to the trust, in which the trustee was personally interested, and from which transactions the trustee personally profited.

XL.

During his trusteeship G. W. Peckham was extensively engaged in the purchase and sale of oil properties as an individual, and in his own right. He would generally buy properties near development in the vicinity of a drilling well, and at a time and under circumstances when the value of properties in the locality was of a highly speculative and fluctuating value. These properties he would buy with his own money, and take title thereto in his own name, and during the period of the fluctuating value

and at a time when it appeared that the interest so bought was of little or no value, sometimes when the property had been condemned, he would thereupon execute an assignment of conveyance from himself as an individual to his trust at a consideration fixed by himself, sometimes for the exact amount of money that he paid for the interest, and sometimes at a price whereby he would personally profit, but at no time did he have the prior consent or subsequent approval of those whose monies and properties he held in trust, and for whom he was a trusted fiduciary.

XLI.

Some of the properties which G. W. Peckham caused the trust books to show it had received for checks
222 so issued were not in fact received by the trust and checks totalling $8,000.00 were issued and cleared and entered upon the trust books as the purchase price of properties but which properties the trust never received.

XLII.

Every sale by the trustee as an individual to himself as trustee was without the prior consent or subsequent knowledge of those from whom G. W. Peckham was acting in a fiduciary capacity, all of the facts being concealed during G. W. Peckham's life and by the subsequent trustee until the original filing of this suit in 1931, whereupon the dual dealings of G. W. Peckham as trustee were repudiated and the trust elected not to be bound thereby and sued thereupon, retaining such properties of some value under an asserted lien thereon to secure the trust in payment of the trustee's misappropriations.

XLIII.

Among the properties conveyed, or supposed to have been conveyed to the trust by G. L. Peckham, as an in-

dividual for a price fixed and determined by himself, and for his own best interests, and which cross-complainants repudiated as nullities, and with respect to which tenders and offers to do equity, are the following, to-wit:

(a) The East 30 acres of a 71 acre tract of the Mulligan Survey, Callahan County, Texas, more particularly described in a deed recorded in Vol. 103 at page 150 of the Deed Records of said County.

(b) 1070 acres known as the Porter Ranch in Archer County, Texas.

(c) Marlborough Addition to the City of Wichita Falls, Texas, and/or its corporate successor, the Texas Investment Company.

(d) East ½ of Lot 10, North Anderson Ranch, Archer County, Texas.

223 (e) Southwest 60 acres of the E. Polk Land, Abstract 717, William Polk Preemption Survey, Archer County, Texas.

(f) The East one-half (E-½) and the Southeast one-quarter of the Southwest one-quarter of Section 35, Township 19 North Range 21 West, Ellis County, Oklahoma.

In this connection Cross-complainants say that none of said properties above mentioned were ever productive of minerals and each of said properties was wholly valueless at the time of the death of G. W. Peckham, and has been continuously since such time, and the substitute trustee had and has but one election under the law and his duties as trustee, which duty he has pursued, namely to repudiate all of the transactions with respect to such properties and to tender the same and to offer to do such equities as may be required, asserting thereon an equit-

able lien to secure Cross-complainants in the payment to them of the misappropriations by G. W. Peckham, deceased.

## XLIV.

Soon after the death of G. W. Peckham in November, 1929, the substitute trustee, who theretofore had been the bookkeeper of the Trust, acting under the direction of G. W. Peckham, and having but ministerial duties, and being the owner of no certificate of stock in the Trust during the period of time that G. W. Peckham was misappropriating the funds, became by appointment of Court the substitute Trustee, and W. H. Peckham became the administrator of G. W. Peckham's estate. These two for a period of time after the death of G. W. Peckham carried out a series of negotiations looking to the satisfactory adjustment of all these matters of defalcation by the former trustee, so that it would not come out and be generally known and the fraud of the deceased Trustee would be concealed. The substitute trustee finding that
224 the bank had not applied certain checks upon the trust's note to the bank, and further finding additional discrepancies so that the total considered by him to be a discrepancy was $19,826.67, being the aggregate amount of the checks which were shown by the books to have been applied and the sale price by the trust of two royalties shown on the books during G. W. Peckham's lifetime, to have been accounts receivable by the Trust, but which the substitute Trustee found G. W. Peckham had personally collected and retained. This discrepancy was called to the administrator's attention and the bank agreed to back Scannell up in the thing and it was agreed that the matter be concealed, the stockholders not being notified and the public not advised with a view to repaying the then considered defalcation out of the proceeds of a life insurance policy of more than $100,000.00.

XLV.

The substitute Trustee told an attorney that there was this $19,826.67 discrepancy and obtained the services of such attorney to prepare a proof of such claim to be filed with the administrator, but said substitute trustee did not tell said attorney any of the other facts herein elsewhere pleaded, and did not ask advice concerning the rights of the stockholders, nor the Trustee's duties as substitute Trustee with respect to all of the facts herein pleaded, but simply requested said attorney to prepare a claim to be filed for, and covering specified items totaling as above shown. Said account was filed at a time when it was agreed by and between the substitute Trustee and the administrator of G. W. Peckham's estate that the fraud of G. W. Peckham's would be concealed so that it would not become generally known, and the existence of the $100,000.00 life insurance money and the administrator's promise to endeavor to work payment of the discrepancies out of such life insurance money, and other facts herein elsewhere pleaded, lulled the substitute Trustee into inactivity, and he actively joined in a
225 continuation of the concealment of the former Trustee's fraud. He did not know what his rights were and assumed and believed that G. W. Peckham had the right to deal between himself individually and himself as a trustee without authority from. or notice to his stockholders. He further believed that he had no alternative as trustee but to accept the properties that G. W. Peckham had conveyed to his trust, nor did he know that he could do other than to claim Marlborough Addition and/or its stock equivalent in the Texas Investment Company. He was without counsel and without advice when, with J. T. Harrell and the bank's lawyer, a stockholder and directors meeting was called and he was elected President of Texas Investment Company, was issued as Trustee one-half of the capital stock of the corporation, which in the meeting he indorsed as collateral security to the note herein sued upon, and which note he also

indorsed as substitute Trustee. He subsequently renewed it some three or four times and paid thereon monies of the trust at a time when he was wholly oblivious to his rights and when he was joined in an effort to further conceal the facts from the stockholders.

XLVI.

Finally when the bank had gotten him to renew several times the 1926 notes and the Texas Investment Company notes, had gotten him to accept stock in Marlborough Addition, and had written up the minutes under the direction of counsel for the bank, and when the Trust had been tied in every possible way that under the circumstances it could be tied without disclosing to the stockholders what had transpired, the bank filed suit to collect the notes, first selling under the pledge all of the capital stock of Texas Investment Company to the bank and here suing for a deficiency existing after applying against the notes the bid of the bank.

226 XLVII.

The bank then sued out an application for the appointment of a receiver and persuaded a district Judge improvidently to appoint such receiver, and which receiver took from the possession of said substitute Trustee all of the books and records of the company and the possession of all of the assets of the company.

XLVIII.

It was at this time that the substitute Trustee for the first time sought advice to determine what rights, if any, the stockholders had, and what duties if any, he owed the stockholders in protecting them against the former frauds of his deceased friend. It was then for the first

time that Scannell disclosed to any attorney the facts and circumstances herein elsewhere pleaded. Thereupon, and without delay, the substitute trustee answered the bank's suit, pleading want of consideration and non est factum to the obligation declared upon by the bank, pleaded the facts herein pleaded in cross action against the bank, and advised by letter the stockholders of what had transpired and what action he had taken, the stockholders by letters commending his action in bring the suit.

XLIX.

The checks above specifically pleaded as having been wrongfully charged against the Trust deposit and credited to the private account of the Trustee through the facilities of the bank and its active participation in the fraud, as well as items pleaded above as having been so diverted between the date G. W. Peckham qualified as Trustee and October 8, 1925, were wholly inoperative to lessen the Trust's deposit balance with the bank, each transaction being wholly without authority, and no demand and refusal to pay such monies by the bank so deposited has ever heretofore been made as to items occurring prior to October 8, 1925, and no demand for items subsequently occurring was made either during G. W. Peckham's lifetime, nor during the period of concealment by the substitute trustee, nor prior to the filing of the original cross action herein. Thus Cross-complainants now charge that $200,000.00 of Trust funds were deposited in plaintiff bank, and no authorized demand and payment thereof has ever been made and the plaintiff bank is justly indebted to Cross-complainants as their deposit balance, in the sum of $200,000.00. This suit, then, is brought, as well for the recovery of said deposit balance as for the bank's active participation with G. W. Peckham in breaches of trust.

227

L.

Cross complainants say that not a single stockholder of Wichita Royalty Company, other than the Trustee, ever knew, prior to the institution of this suit, of any of the facts herein pleaded; that such facts were concealed from them; that such facts were well known to the bank, its officers, agents, and employees; that the facts were themselves self-concealing; that the bank knew the monies deposited to Wichita Royalty Company's account were trust funds and that G. W. Peckham was but the Trustee thereof, representing parties beneficially interested and in the fiduciary capacity. The bank further knew that the trustee had no right to use trust funds for personal purposes. The bank knew that G. W. Peckham had a personal account in the bank, a deposit checking account and also a note or liability account. It knew that G. W. Peckham over a long period of time and in a series of transactions, all having the same character and involving the same element or plan was transferring large sums of money from the trust account to his personal account and usually at times when his personal account was in need of additional funds. The bank actively and knowingly aided him in making the transfer. Most of the checks were made payable to the bank's order. The bank knew the Trustee was commingling trust funds with his personal funds, and knew that it was actively assisting him in doing so. It knew that Peckham was
228 drawing checks on his personal account for personal purposes, an account which it knew was commingled funds. It further knew that every payment made from the commingled account for personal purposes would amount to a wrongful conversion of trust funds. It knew that G. W. Peckham was indebted to it in large sums of money and that he was making payment on this debt from time to time, to the bank by drawing checks on his personal account, which it knew was commingled funds of personal funds and trust funds. It knew that he was using trust funds to pay a private debt. It knew that G.

W. Peckham's personal credit rating would be increased by its participation with the Trustee in transferring trust funds to G. W. Peckham's personal balance, which was relatively small, monies which the bank knew he did not own. The bank aided him in making these transfers and then accepted his checks in payment of his personal debt to the bank.

LI.

Cross complainants further state that at the very beginning of his trusteeship, G. W. Peckham was so derelict in the discharge of his duties as trustee as that he forfeited any right to compensation in any amount in that he failed to use ordinary care in his administration, was guilty of gross negligence, repudiated the trust and claimed the property as his own, misappropriated trust funds, failed to keep proper record, of trust administration, failed to account, filed inaccurate and false account, made illegal investments, failed to invest trust property, mingled trust property with his own, was guilty of conduct warranting removal, was guilty of disloyalty to the cestuis in that he acted for his own selfish interests and failed to protect the trust's property. Of trust funds deposited to the account of and belonging to the Wichita Royalty Company, G. W. Peckham transferred approximately $30,000.00 thereof to his private account, causing the books to show that
229 such aggregate sum was made up of monthly payments of four or five hundred dollars each month as a salary, and while if the trust had been administered by him faithfully, he would, in an accounting, have been entitled to reasonable compensation, yet by reason of the way and manner in which he did administer the Trust, he is, in accounting entitled to no salary, and the plaintiff bank, having received a portion of such trust funds in payment of G. W. Peckham's personal debt, and having received other and different funds in such payment and having had actual knowledge and constructive notice of G. W. Peckham's lack of fidelity and of his

agency's having determined, there was no authority for the salary checks to be drawn, for the transfers to be made, and for the trust to be charged therewith, the receipt of such monies being a misappropriation by the trustee through the facilities and with the active participation by the plaintiff bank.

LII.

Upon his becoming trustee, G. W. Peckham immediately began to commingle trust funds with his own and to pay therefrom and therewith his personal debts to the bank at a time and under circumstances when his account was such as that the payments to the bank were of trust funds and the bank knew in the spring of 1923, that G. W. Peckham was paying his personal debts with trust funds, and they knew then and thereafter that G. W. Peckham was dishonest, that he was unfaithful to his trust, that he was using the facilities of the bank to accomplish misappropriations of trust funds, that he was transferring funds from the trust account to his own personal account upon checks payable to the bank's order and for the purpose of privately using such funds, that he was destroying the evidence of the trust's title to its property in violation of the inhibition placed on the trustee by the declaration of trust, that he was
230 acting in a dual capacity and personally profiting therefrom, but, notwithstanding such knowledge, the bank permitted the continued commingling of the funds and the disbursement thereof for non-trust purposes to such an extent that G. W. Peckham was permitted to accomplish the misappropriation of trust funds in the amount of $200,000.00 with the active participation in such breaches of trust by the plaintiff bank, its officers and agents.

LIII.

G. W. Peckham was insolvent at the time of his death and every dollar of his assets were received through the

administration of his estate by the bank under liens and such properties as the trustee conveyed to the trust and which have been retained by Cross-complainants have been retained, not in affirmance of the conveyance to it, but under an asserted lien as security for the debt due by G. W. Peckham's estate by reason of his misappropriations.

## LIV.

(1) By instrument dated February 12, 1923 and recorded in Volume 99, at page 544 of the Deed Records of Young County, Texas, G. W. Peckham, for $8,000.00, acquired an undivided one-fourth interest in and to the minerals of the BRIR No. 39 J. E. Dowdle Survey, Abstract 2215, Young County, Texas, containing 160 acres.

(2) Said mineral estate was acquired at a time when its value was fluctuating, it being in the vicinity of active development.

(3) Thereafter G. W. Peckham executed a conveyance to Wichita Royalty Company of an undivided 3/16 mineral interest in said 160 acres of land, acknowledging the same on April 25, 1923, and causing same to be filed May 18, 1923, and recorded in Volume 99, page 555 of the deed records of Young County, Texas.

231 (4) Said trustee caused trust books to show the consideration for such assigned interest to be $7,500.00, but such books did not show the personal interest of G. W. Peckham therein. The trustee, as an individual, charged himself as trustee with interest upon deferred payments, the original payment being Wichita Royalty Company check No. 1253 dated March 10, 1923, payable to the order of the City National Bank of Wichita Falls, Texas, for $2,500.00, the second payment being by check 1291 dated April 9th, 1923, payable to the order of G. W. Peckham in the amount of $2,516.67, and the third

payment being by check No. 1325 dated May 11, 1923, payable to the order of G. W. Peckham in the amount of $2,533.33, all of such checks being drawn on the trust's deposit with plaintiff bank, charged against such deposit account, the last two items credited to the personal account of G. W. Peckham and the first being credited to the account of B. L. Fain.

(5) On May 12, 1923, by instrument recorded in Volume 99, page 587, of the deed records of Young County, Texas, G. W. Peckham conveyed to Perpetual Royalty Syndicate, F. O. Harrell, Trustee, an undivided 1/16th interest in and to the minerals in said above described 160 acres, receiving therefor from Perpetual Royalty Syndicate $2,500.00.

(6) The $2,516.67 transfer of funds from the trust account to the trustee's personal account was accomplished April 10, 1923, at a time when G. W. Peckham's then balance was $866.25 and the bank then knew that G. W. Peckham's personal account consisted of commingled funds.

(7) Thereafter and on May 11, 1923, at a time when $302.10 of the $2,516.67 deposit remained in the commingled account a second check for $2,533.33 was
232 deposited to G. W. Peckham's personal account and charged against the trust's deposit making the account contain $2,836.43.

(8) Thereafter, and on June 22, 1923, when the commingled account consisted of $428.85 of the $2,533.33 deposited and $2,683.34 of his personal funds, G. W. Peckham paid the plaintiff bank $3,050.60 upon his personal indebtedness to the bank, of which payment the bank knew, and was charged by law with notice, that $390.86 of the payment so made to the bank upon the personal indebtedness of G. W. Peckham was money belonging to the Wichita Royalty Company transferred to and com-

mingled with G. W. Peckham's private funds, from and after which time the bank knew that G. W. Peckham was unfaithful to his trust and was using its money to pay his private debts, and from which time the bank no longer had the right, if any it had theretofore, to permit the transfer of trust funds to the personal account of G. W. Peckham.

(9) Having personally dealt with the subject matter of his trust in profit to himself in the purchase and sale of the above described interest, the trustee forfeited any right to compensation, and throughout his subsequent tenure of office he continued personally to deal with the subject matter of his trust using its funds, destroying evidences of the trust's title to property, profited in trades made in his dual capacity, paying his private debts to the bank and to its officers with monies thus obtained from the trust, whereby he was and is entitled to no compensation and the bank had no right to permit the transfer of funds evidenced by monthly checks entered by him as salary, the proceeds of which not being used for any authorized trust purpose.

(10) The mineral interest above described as having been conveyed to Wichita Royalty Company produced oil in paying quantities Wichita Royalty Company receiving monthly payment totalling $8,591.76.

233 (11) Cross complainants say that the above facts (other than the execution of the conveyance by G. W. Peckham to his trust) were all unknown to the present trustee until discovered immediately before the filing of this pleading. It was not known that G. W. Peckham made a profit in the sale of his personally acquired interests, nor that he paid the bank a part of the proceeds of the checks which he caused to be drawn on the trust account and he did not know that the transaction was handled other than that the interest was paid for by the trust to the original fee owners.

(12) Possessed now with such information above alleged, Cross-complainants elect to rescind said transactions between the former trustee and the trust and elect not to be bound thereby and herenow tender an accounting of all funds received as the proceeds of the minerals accruing to this interest and ask that they recover and be given credit in accounting for the $7,550.00 with interest thereon as provided by law, with credit thereon of the value of the minerals accruing to said interest. In this connection, Cross-complainants make such tenders and offer to do such equities as in good conscious required, asserting that said property is being held under an equitable lien to secure Cross-complainants in payment of the mis-appropriations of the former trustee, which lien is now sought to be foreclosed, with offer to re-convey the same or to do any other thing required in equity to accomplish the repudiation of the dual dealings of the former trustee,

(13) Cross-complainants say that crediting the $7,550.00 and interest with the proceeds derived from the sale of minerals accruing to such interest and computing by monthly, yearly or other balances or figures, and computing interest upon debits and credits as the Court may direct in either oil, or any such methods, the trust would be entitled to a credit in accounting between that
234 which they paid, with interest, and that which they received thereon with interest, and the Court is invited to determine the method of such computation.

LV.

On February 29, 1924, G. W. Peckham caused trust check No. 169 for $1,200.00 to issue payable to his order and drawn on plaintiff bank, which check was charged against the trust's deposit with the bank and credited to G. W. Peckham's personal account with the bank. The trustee caused the trust books to show the $1,200.00 to be

in payment to him of a second hand Studebaker automobile which he sold to the company which he had theretofore purchased as his own with his own money, and thereafter continued to use in his private business until it was sold on September 30, 1926, with the trust receiving $555.00 from the sale, to which G. W. Peckham in accounting is entitled to credit, but he should be charged with $1,200.00, Cross-complainants repudiating said transaction. In this connection Cross-complainants say that the car had been disposed of long prior to the institution of this suit in 1931, and the present trustee was not and is not in possession to tender the same back, but asks that the transaction be avoided and the bank held liable upon the transfer of the $1,200.00 but with a $555.00 credit.

LVI.

(1) Cross-complainants would show that G. W. Peckham, as an individual, conveyed to himself as trustee, on April 22, 1924, a 1/64 mineral interest in Lots 13 and 14, Block 27, American Tribune New Colony's subdivision of Archer County, Texas, for a consideration paid to him of $27,500.00 which property G. W. Peckham, as trustee, sold during his lifetime and deposited the $6,000.00 proceeds of same to his personal credit with the plaintiff bank.

(2) $9,250.00 was paid by Trust check No. 185 drawn on the plaintiff bank, payable to G. W. Peckham's order charged against the trust deposit and credited to trustee's personal account on March 18, 1924.

235 (3) That day G. W. Peckham paid the plaintiff bank $10,026.75 in which payment the bank received $5,500.91 of trust funds upon the payment by G. W. Peckham of a note due the bank which was executed by W. H. Peckham as accommodation maker for G. W. Pickham, and in this connection it is shown that G. W.

Peckham borrowed from plaintiff through J. T. Harrell, $20,000.00 on March 7, 1924, which was deposited to G. W. Peckham's private account with said bank and a note for $10,000.00 executed by G. W. Peckham, whose credit would not stand the $20,000.00 loan at the time, and the other $10,000.00 was evidenced by note executed by W. H. Peckham, G. W. Peckham receiving the proceeds of the entire $20,000.00 loan, and repaying the same, one note on March 17, 1924, and the other March 18, 1924, both payments being out of commingled funds, and the latter payment to the extent of $5,500.91 being paid out of trust funds.

(4) In this connection, Cross-complainants say that Wichita Royalty Company received credit for the proceeds of some of the minerals produced from said property, which should be credited in accounting, the former trustee and the bank to be charged with that which the Royalty Company paid for the interest plus lawful interest thereon, and credited with such offsets as oils payments create.

LVII.

(1) G. W. Peckham, as an individual, sold to himself as trustee, Property 76, being H. H. White lease, Archer County, Texas, for $21,000.00, $11,000.00 of which trust fund so paid was deposited to G. W. Peckham's personal account on July 3, 1924, and therefrom expended by G. W. Peckham for non-trust purposes. The remaining $10,000.00 was deposited to G. W. Peckham's personal account in plaintiff bank July 25, 1924, which likewise was expended for non-trust purposes.

236 (2) G. W. Peckham, in his lifetime, as trustee, sold this property, receiving therefor $2,334.90. The trust received $2,925.90 as the proceeds of oil accruing to the interest. The bank should be charged with $21,000.00 and interest and credited with $2,334.90 as

of February 17, 1925, together with oil runs as and when paid, and an accounting be had to determine the amount thus determinable.

LVIII.

On November 3, 1924, G. W. Peckham's commingled account consisted of $762.77 of his money and $1,151.18 of the trust's money, a total of $1,913.95, against which account, plus a deposit that day made, and other checks issued against the same, G. W. Peckham paid $5,100.00 to the plaintiff bank upon his private debt, $128.48 of which payment was of trust funds.

LIX.

On May 5, 1925, G. W. Peckham caused trust check No. 373 for $2,500.00 to issue drawn on plaintiff bank against the trust account and deposited to the personal account of G. W. Peckham, to whose order the same was made, the consideration being the assignment of 1/16 royalty known as Property No. 79 from which the trust received $419.23 in oil runs and which property became valueless and abandoned by the operator prior to the institution of this suit. That said property is and has been valueless and there was no election for trustee to make concerning same, but same is tendered back with offers to do such equities as in good conscious required and the bank and G. W. Peckham should be charged with $2,500.00 in accounting and credited with $419.23 with interest computed upon the accounting as provided by law.

LX.

Of the $2,500.00 last mentioned, $2,453.17 remained in the commingled account at a time when on May
237 12, 1925, G. W. Peckham drew a check against the commingled account to the plaintiff bank's order

for $4,056.00 in payment of his private debt to the plaintiff bank, $1,386.92 of which payment was the trust's money.

LXI.

On June 11, 1925, G. W. Peckham's commingled account consisted wholly of trust funds at which time and from such trust funds G. W. Peckham paid to the plaintiff bank upon his private debt the sum of $66.67, being interest upon his note No. 61679.

LXII.

(1) In July, 1925, G. W. Peckham conveyed to the trust Property No. 80 for which the company paid him $11,000.00 upon checks drawn on the plaintiff bank payable to G. W. Peckham's order, the first check for $6,000.00 being deposited June 24, 1925, and $5,000.00 deposited June 29, 1925, the trust account being charged and G. W. Peckham's personal account being credited with said amount.

(2) This property produced and the trust fund received $10,174.51 in oil payments over a period of years.

(3) Cross-complainants elect to repudiate such transaction and make such tender and offer to do such equities as in conscious required, alleging that the bank and G. W. Peckham should be charged in accounting with $11,000.00 and interest accrued thereon and be credited with the oil payments as and when received with an equitable lien upon said property foreclosed as security for the debt due Cross Complainants, for which purpose Cross complainants hold said property.

LXIII.

On September 24, 1925, G. W. Peckham paid Highland Irrigation Company $3,869.25 as a member and for the ac-

count of the Marlborough partnership, $357.09 of which was trust funds.

238 LXIV.

On January 5, 1926, G. W. Peckham paid $812.00 of trust funds, being the only funds in the commingled account, upon the private debt of J. T. Harell and G. W. Peckham as members of the Marlborough partnership, and on January 12, a similar payment of $454.50 was made.

LXV.

On May 15, 1926, G. W. Peckham paid to plaintiff bank out of commingled funds on his personal debt $550.00, $254.21 of which was trust funds.

LXVI.

On August 10, 1926, G. W. Peckham paid to plaintiff bank $550.00 by check drawn on the commingled account at a time when same was constituted wholly of trust funds, said payment being for interest personally due the bank by G. W. Peckham.

LXVII.

On January 19, 1927, G. W. Peckham paid $1,009.10 of trust funds to the plaintiff bank upon his private debt by check drawn for $2,506.12 drawn against the commingled account.

LXVIII.

On March 16, 1927, G. W. Peckham paid the bank upon his personal debt $777.30 of trust funds by issuing his check against the commingled account for $1,500.00.

LXIX.

(1) On April 16, 1927, G. W. Peckham caused to be transferred to his trust Wichita Royalty property No. 97 in which G. W. Peckham was personally interested, and for which the trust paid $3,000.00, and of which payment G. W. Peckham received $2,500.00, checks therefor being charged against the trust account and deposited to G. W. Peckham's personal account with the bank and used for non-trust purposes.

239 (2) The trust had received $397.85 in oil runs from the said property and same was abandoned, worthless and of no value at the time of the institution of this suit and the trustee has no election to make with respect thereto, but if required, Cross-complainants now make such tenders and offer to do such equities as in good conscious required, alleging that the bank and G. W. Peckham should be charged in accounting with $3,000.00 and credited with said oil runs and the accounting computed with interest applied as the law directs.

LXX.

On October 14, 1927, G. W. Peckham caused trust check for $2,400.00 to issue payable to plaintiff's bank's order with voucher notation to show that it should apply upon the trust's debt to the bank, which check was deposited to G. W. Peckham's personal account. Therefrom he paid the bank but $1,336.00 on the trust fund and $520.00 on his own note, and the account at the time consisting wholly of trust funds, and the payment to the bank upon his personal debt being wholly of trust funds.

LXXI.

On September 27, 1928, G. W. Peckham paid from the commingled account $3,163.78, $438.06 of which was trust

funds, same being in payment upon his personal debt to the bank.

LXXII.

On November 1, 1928, G. W. Peckham issued his check against the commingled account payable to "Note and Interest" for $4,200.00 which was charged against the commingled account, and $426.95 of the trust funds were thus disbursed for non-trust purposes.

LXXIII.

On January 12, 1929, G. W. Peckham paid from the commingled account $2,013.33 upon his personal debt to plaintiff bank $234.22 of which was trust funds.

240 LXXIV.

On December 23, 1924, G. W. Peckham caused trust check No. 317 for $695.00 to issue drawn on plaintiff bank and deposited in G. W. Peckham's personal account. The trustee caused the books to show the trust's acquisition of the mineral interest from which the trust had received but $69.50, and the interest being valueless at the time of the institution of this suit and the present trustee but recently learning that G. W. Peckham was personally interested in the transfer to the company, the conveyance being from F. O. Harrell, but in fact, G. W. Peckham was personally interested and received $695.00 therefor; therefore, the trustee repudiates and makes such tenders and offers to do such equities as required, asking that $695.00 be charged against the bank and G. W. Peckham in an accounting with interest and the account credited with $69.50 and interest computed as provided by law.

LXXV.

Cross-complainants say that the records of the plaintiff bank and those of its officers and agents have not been

available for inspection by Cross-complainants, that all of the defalcations by the former trustee were accomplished through the facilities of the bank and its officers, largely upon checks made payable to the bank's order and there are numerous entries and cross entries, charges and counter charges, debits and credits, transmutations of funds and issuance of cashier's checks and travelers checks, the crediting of notes upon which G. W. Peckham was personally liable, but whose individual liability record does not disclose the existence of such liability, and in other ways the plaintiff bank and the deceased trustee so confused and confounded the respective accounts as that nothing short of an accounting to be made by the former trustee, by the plaintiff bank and by the
241 impleaded defendant, J. T. Harrell, will suffice to disclose the real transactions, all of which information is in the possession of the bank, its officers, agents, and employees, and not in the possession of cross-complainants. That cross-complainants have submitted to the bank all of their books and records which the bank has caused to be photostated, but that cross-complainants have been unable so to obtain a copy of the books and records of the bank, therefore, cannot more definitely plead than they have herein pleaded, but say that during the trusteeship of G. W. Peckham with the active participation by the plaintiff bank, its officers and agents, transfers were made from the trust account to the personal account of G. W. Peckham in the aggregate total of $253,418.41 and such funds commingled with the private funds of G. W. Peckham who therefrom paid during said time to plaintiff bank upon his personal indebtedness, the aggregate total of $250,078.36.

LXXVI.

While not all of the payments made by G. W. Peckham to the bank upon his private debts consisted of trust funds, yet, but for such transfers and but for his trust peculations, he would have been wholly unable to pay the

bank the monies which he personally borrowed from it, and said bank permitted such transactions to begin and thereafter continuously to occur that it might profit therefrom, as it did.

Wherefore, the following alternative prayers are made in the order named.

1. That this cause be remanded to the State Court whence it came.

2. That an account be stated between the several parties hereto with respect to the trust funds received and expended and the several purposes thereof.

242 3. That the debt due cross-complainants upon the facts above alleged be fixed, determined and adjudicated, and that cross complainants recover the amount thereof with interest and costs.

4. That cross complainants be awarded such other and further, general and special, legal and equitable relief to which cross complainants may be entitled.

KILGORE & ROGERS,
By GUY ROGERS,
Attorneys for Wichita Royalty Co. and its trustee.

The State of Texas,
County of Wichita.

E. E. Scannell being sworn on oath says that the facts stated therein are true.

(Signed) E. E. SCANNELL.

Sworn to and subscribed before me this 12th day of December, 1936.

(Signed) GRACE JARNAGAN,
(Seal) Notary Public, Wichita County, Texas.

## WICHITA ROYALTY COMPANY'S CROSS COMPLAINT AND INTERPLEADER AGAINST J. T. HARRELL.

Filed in U. S. Dist. Court Dec. 12, 1936.

243 (Title Omitted.)

At a time when their first plea to this Court's jurisdiction and motion to remand has been overruled with exceptions allowed and entered, and at a time when the Court has directed their filing recasted pleadings within ten days from December 3, 1936, but without prejudice to their reserved right to file a second plea to this Court's jurisdiction, and motion to remand, come now Wichita Royalty Company, a joint stock association, and E. E. Scannell, its trustee, herein called cross-complainants, and recast their pleadings herein so that this cause of action against J. T. Harrell, W. H. Peckham, Administrator of the estate of G. W. Peckham, deceased, Hazel Peckham, surviving wife of G. W. Peckham, deceased, William Peckham, George Peckham, minors, and Robert Peckham, sole surviving children of G. W. Peckham, deceased, and Texas Investment Company, a dissolved corporation that was and is a citizen of Texas, shall be as follows:

I.

Cross-complainants say that the cause of action herein asserted was first asserted in the District Court of Wichita County, Texas, whence this case was removed upon petition of the defendants herein and others, in which cause so filed in the State Court, J. T. Harrell and W. H. Peckham, as said administrator, appeared, answered and invoked the Court's jurisdiction to determine matters of dispute between the parties. Cross-complain-
244 ants further say that there is no Federal question involved herein, that same does not involve a

separable controversy between the named defendants and that the suit is not one of which this Court has original jurisdiction and the same should be remanded to the State Court whence it came for which prayer is respectfully made.

II.

Wichita Royalty Company and E. E. Scannell, its trustee, herein called Cross-complainants, now complain of J. T. Harrell, W. H. Peckham, as administrator of the estate of G. W. Peckham, deceased, Robert Peckham, each citizens of Texas, and of Hazel D. Peckham, William Peckham and George Peckham, the remaining heirs of G. W. Peckham, deceased, resident citizens of the state of Colorado, and of Texas Investment Company, a dissolved corporation that was and is a citizen of Texas, hereinafter called defendants, and would respectfully show:

III.

That W. H. Peckham is the duly qualified and acting administrator of the estate of G. W. Peckham, deceased, and that Hazel Peckham, William Peckham, George Peckham, and Robert Peckham, are the sole and only heirs of G. W. Peckham deceased.

IV.

On January 1, 1926, G. W. Peckham and J. T. Harrell were business associates and good friends. The former was trustee of the Wichita Royalty Company, and the latter was the chief active officer of the plaintiff bank. These men were partners in a large surburban venture, and joint owners of land known as the Curlee tract; likewise they owned an undivided interest in a producing property known as the Stephens Royalty, G. W. Peckham having acquired his interest November 3, 1933 from

J. T. Harrell and another bank officer, said J. T.
245 Harrell owing the bank at that time $7,500.00, which indebtedness was increased on January 11th to $10,560.00, and again increased on January 19, to $15,574.44. G. W. Peckham, owed the bank $28,050.00. He owed J. T. Harrell and an associate banker $5,000.00 and interest upon notes executed November 3, 1925. J. T. Harrell and G. W. Peckham were jointly and severally liable to Highland Irrigation Company upon vendor's lien notes for the purchase of the Marlboro partnership property, totaling $51,895.00 with interest. J. T. Harrell was G. W. Peckham's personal banker and the latter would have told the former any matter or thing with respect to his business that the former should have asked. It was the custom and practice of the banks and bankers generally, and of the plaintiff bank in particular, to inquire as to the intended purpose for which the proceeds of a $15,000.00 to $25,000.00 loan would be used when an application therefor was made. Wichita Royalty Company was free of debt except current items. It owned valuable properties. It was not indebted to the bank.

V.

In such a setting J. T. Harrell and G. W. Peckham negotiated the sale by J. T. Harrell and another of the bank's officers, of their remaining interest in the Stephens Royalty, whereby Wichita Royalty Company obtained the legal title to said interest, the agreed consideration being $20,000.00, plus G. W. Peckham's personal interest in the Curlee land, then of the agreed and reasonable value of $2,407.00.

VI.

G. W. Peckham's personal balance at the beginning of business January 4th was $878.70. That day he caused Trust check No. 452 to be drawn on the bank payable to

his individual order for $5,000.00, which he that day deposited to his personal account. The next day he paid Highland Irrigation Company $812.00 upon the
246 joint obligation of J. T. Harrell and G. W. Peckham the check being drawn on the commingled account. From January 6th to January 11th, G. W. Peckham's commingled account consisted wholly of trust funds, and on January 11th he caused trust check No. 458 to issue, drawn on and payable to the bank's order in the sum of $5,000.00, which he deposited to his private account, and against which, and on the same day, he issued his check for $2,567.75, as his part of the joint purchase with Harrell and Basham of the Curlee land.

VII.

The next day, January 12th, at a time when Peckham's commingled account consisted wholly of trust funds, he issued his check to Highland Irrigation Company for $454.50 in payment on the joint obligation of J. T. Harrell and G. W. Peckham in their Marlboro partnership venture.

VIII.

The fourth day thereafter, January 16th, Wichita Royalty Company's liability record with the bank was charged with $15,300.00, although the Trust did not get credit for the proceeds of such loan until January 18th.

IX.

On January 16th, G. W. Peckham issued his check to J. T. Harrell and C. E. Basham for $2,201.32, drawn on the commingled account, $1,362.87 of which consisted of funds theretofore transferred from the trust account.

X.

The second day thereafter, January 18th, the day the trust received credit in its deposit account for the $15,000.00 loan, G. W. Peckham caused Trust check No. 461

for $15,769.07 to issue, payable to the bank's order and deposited in G. W. Peckham's personal account, noting for the first time in the records of the Royalty Company that such check, together with checks Nos. 452 and
247 458 were in payment for an interest in Stephens Royalty. G. W. Peckham's personal balance at the close of business January 18th of $18,765.87 was constituted wholly of funds transferred from the trust account.

XI. —

Thereafter and before another deposit to his personal account, and when the account still was constituted wholly of transferred funds, G. W. Peckham, on January 25th, issued his check to J. T. Harrell and C. E. Bahsm for $10,028.00, which check that day was charged against G. W. Peckham's commingled account. Half of the check, or $5,014.00, was deposited to J. T. Harrell's personal account with the bank, at a time when on January 25th his personal account was $219.16 and his personal liability to the bank was $15,574.44. That same day, and with $4,827.71 of the funds transferred from the trust account to G. W. Peckham's account, and then to J. T. Harrell's account, the banker who negotiated the January 16th loan from which the proceeds were derived, paid the bank upon his private debt the sum of $5,006.67, leaving his personal balance at the close of business January 25th, $186.29.

XII.

Three days later, January 28th, J. T. Harrell and C. E. Basham, acknowledged deed of conveyance to Wichita Royalty Company, and the receipt of the consideration therefor, which consideration J. T. Harrell testified was $20,000.00, plus Peckham's personal interest in the Curlee land, which J. T. Harrell testified was $2,407.00.

XIII.

The effect of the above is this: J. T. Harrell, as an individual, sold a valuable property. As a banker, he loaned G. W. Peckham the money with which it was bought, the loan being made upon the credit of the royalty company, to which company the deed ran. G. W.
248 Peckham, as an individual, disposed of his interest in the Curlee land for $2,407.00, paid and obligated himself to pay, and later paid $20,000.00 in cash, and as trustee, G. W. Peckham charged his trust $25,769.07 for the property and made a private gain of $3,362.07. Then, too, Peckham paid Harrell and Basham $10,028.00, which J. T. Harrell testified was G. W. Peckham's personal debt, and from J. T. Harrell's one-half thereof, deposited in the bank, J. T. Harrell paid the bank upon his private debt.

XIV.

On February 2nd, 1926, trust check No. 465, was deposited to G. W. Peckham's personal account for $400.00 on which day, and against the commingled account, G. W. Peckham drew his check for $5,100.00 payable to J. T. Harrell and C. E. Basham, $2,550.00 being deposited in the bank to the account of each payee. Of the $5,100.00 so paid the bank's officers, $3,074.15 was of the proceeds of monies transferred from the royalty account to G. W. Peckham's personal account. On February 13th, G. W. Peckham's personal liability to the bank was credited with $550.00, and his commingled account charged therewith upon his personal check drawn thereon.

XV.

On February 27, $400.00 was transferred from the trust account to G. W. Peckham's personal account, and on the same day G. W. Peckham drew a check against

the commingled account payable to the bank's order for $21,000.00. On the same day J. T. Harrell paid the bank upon his personal indebtedness $10,000.00, but, without additional records, we are unable to say what, if any, connection there is between these transactions.

XVI.

On March 1, 1926, G. W. Peckham owed the bank $28,050.00, plus interest. His personal balance that morning was $741.90. J. T. Harrell then owed the bank $7,060.00. G. W. Peckham and J. T. Harrell were still jointly obligated upon the Marlboro indebtedness, in excess
249 of $50,000.00. W. H. Peckham then owed the bank $6,120.00, and he was liable with J. T. Harrell and G. W. Peckham on the Marlboro indebtedness.

XVII.

That day, March 1st, G. W. Peckham and J. T. Harrell concluded negotiations for a $25,000.00 loan, whereby the trust's note therefor was executed and its liability account charged with $25,500.00, additional, and its deposit account credited with $25,000.00. On the same day, March 1st, G. W. Peckham, issued his check drawn on the commingled account payable to W. H. Peckham for $11,811.85 in payment to W. H. Peckham for his interest in Marlboro addition. On March 1st, G. W. Peckham's personal balance was $341.90, and his balance was insufficient to pay W. H. Peckham's $11,811.85 check until March 6th, on which day W. H. Peckham's personal balance of $225.20, consisting wholly of transferred funds itself, was increased $17,623.70 upon trust check No. 478 drawn on and payable to the bank's order, charged against the trust fund and deposited to the trustee's private account, the trustee causing the records to show the sale to his trust of one-half interest in the Marlboro

partnership. That same day, March 6th, G. W. Peckham drew his check against the commingled account, consisting wholly of transferred funds, for $5,060.00, payable to the order of Harrell and Basham, one half of which was deposited to Harrell's account and the other half to C. E. Basham's account in the bank. On March 9th, W. H. Peckham's $11,811.85 check cleared and same was added to his then deposit balance with the bank of $518.52, and on the same day W. H. Peckham paid to the bank his entire indebtedness of $6,120.00, all of which was paid with the proceeds of transferred funds except his beginning balance of $518.52.

XVIIII.

That G. W. Peckham during the period covering the transactions herein described was trustee of the Wichita Royalty Company and managing partner of the
250 Marlboro Addition, originally a partnership between W. H. Peckham, J. T. Harrell, G. W. Peckham, and another, but from and after March, 1926, when G. W. Peckham acquired W. H. Peckham's interest, the Marlboro partnership affairs were handled and administered by G. W. Peckham and J. T. Harrell.

XIX.

As trustee of the Wichita Royalty Company, G. W. Peckham had at his disposal, and subject to his check, large sums of money in the bank, whose chief executive was J. H. Harrell, who was jointly obligated with G. W. Peckham in large items of indebtedness and their joint venture as partners in the Marlboro Addition, necessitated the expenditure of large sums of money and G. W. Peckham was unable to pay his part thereof.

XX.

Accordingly, G. W. Peckham would from time to time, as his needs and those of the firm required, cause large

sums of money to be transferred from the trust account to his personal account so that therefrom he could, as he did, pay to or for the account of the Marlboro partnership, large sums of money and so that he could pay J. T. Harrell private debts which G. W. Peckham owed J. T. Harrell, causing the trust books to reflect the trust's investment and contribution to the Marlboro firm.

XXI.

Accordingly, trust checks totaling $57,219.44 were drawn against the trust deposit with the City National Bank of Wichita Falls, and charged against said account and either deposited to the account of G. W. Peckham or paid direct upon the obligations of J. T. Harrell and G. W. Peckham as partners in the Marlboro Addition, and such funds so transferred from the trust account to the private account of G. W. Peckham were in-
251 tended by G. W. Peckham to apply, and did apply, and were paid upon the debts due by the Marlboro partnership, and into its account or for its use and benefit and for the use and benefit of J. T. Harrell and G. W. Peckham, there being no consideration moving to the Wichita Royalty Company for such expenditure, the same being wholly beyond the power of G. W. Peckham to accomplish and same being for the purpose not authorized by the trust and the use of such money being known to the defendant J. T. Harrell who loaned substantial monies in the name of the trust in order that G. W. Peckham might obtain the same by transfer thereof to his private account.

XXII.

Furthermore, with the knowledge, consent and active participation of the defendant, J. T. Harrell, G. W. Peckham made a private profit of $3,362.07 out of the sale by J. T. Harrell and C. E. Basham to Wichita Royalty Com-

pany of the Stephens Royalty and from the proceeds of a loan made by J. T. Harrell on behalf of his bank the said J. T. Harrell was paid sums of money above set out.

XXIII.

Furthermore, G. W. Peckham, as trustee of the Wichita Royalty Company, withdrew from the trust account and applied to unauthorized purposes $200,000.00, the records of the bank showing the charge against the trust deposit, and a corresponding credit to the personal account of G. W. Peckham, and other entries reflecting the way and manner in which G. W. Peckham accomplished the mis-appropriations through the facilities of said bank, and the defendant J. T. Harrell, with knowledge and notice and possessed of such facts as reasonably to stimulate inquiry, which if pursued with reasonable diligence, would have disclosed to J. T. Harrell that G. W. Peckham was doing that with the trust funds so deposited in the bank of which J. T. Harrell was the executive head, which was beyond his power as trustee, for purposes
252 beyond the scope of his authority, for a purpose not authorized by the declaration of trust, wherefrom said bank had no power or authority to charge the trust's deposit account therewith and suit has been instituted in the District Court of Wichita County, Texas, for the recovery against said bank of the deposit account of Wichita Royalty Company with said bank, alleged to be $200,000.00, and in the alternative, against said bank for its active participation with G. W. Peckham in breaches of trust to cross-complainants damaged in the sum of $200,000.00, J. T. Harrell actively cooperating and participating with G. W. Peckham in all of said transactions upon which said suit against said bank is based, and reference is here made to the cause of action herein elsewhere asserted against said bank by Wichita Royalty Company.

XXIV.

That at the time of the death of G. W. Peckham he and J. T. Harrell and others were negotiating toward the formation of a corporation to take over the assets of the Marlboro Addition, said corporation known as the Texas Investment Company, which was chartered, but its charter forfeited, and the corporation dissolved in the spring of 1933, and the same was a dissolved corporation at the time it joined in the petition and filed the bond for the removal of said suit to the Federal Court.

XXV.

That Wichita Royalty Company holds record title to properties equitably owned by the estate of G. W. Peckham against which Wichita Royalty Company asserts a lien for the repayment of the mis-appropriations of trust funds by G. W. Peckham. There stands of record in the name of G. W. Peckham property equitably owned by Wichita Royalty Company and not claimed by the estate of G. W. Peckham, from which oil is being produced in substantial quantities of considerable value, the
253 amount and extent of which being unknown to cross-complainants. Furthermore, there has never been an accounting between the parties hereto or any of them with respect to receipts and expenditures of trust monies, and each party hereto should be required to state an account of such trust monies that have been received and such use thereof to which the same has been put, to the end that it may be determined what is the correct amount as between the parties inter se.

XXVI.

Cross-complainants say that the law of the case has been fixed and determined by the decision of the Supreme Court of Texas as set out in the mandate on file among

the papers in this case, to which reference is made for all purposes.

Wherefore, cross-complainants make the following alternative prayers, each presented in the order named:

1. That this suit be remanded to the State Court whence it was removed.

2. That cross-complainants recover of and from the defendants named above, jointly and severally, the sum of $200,000.00 with lawful interest thereon, for an accounting, and for such other and further, general and special, legal and equitable relief to which cross-complainants may be entitled.

KILGORE & ROGERS,
By GUY ROGERS,
Attorneys for Wichita Royalty Company and its Trustee.

The State of Texas,
County of Wichita.

E. E. Scannell being sworn on oath says that the facts stated in the above motion are true.

E. E. SCANNELL.

Sworn to and subscribed before me this 12th day of December, A. D. 1936.

GRACE JARNAGAN,
(Seal) Notary Public in and for Wichita County, Texas.

## WICHITA ROYALTY COMPANY'S RECASTED CROSS COMPLAINT AND INTERPLEADER AGAINST CITY NATIONAL BANK IN WICHITA FALLS, ET AL.

Filed in U. S. District Court December 12, 1936.

254 (Title Omitted.)

At a time when their first plea to this Court's jurisdiction and motion to remand has been overruled with exceptions allowed and entered, and at a time when the Court has directed their filing recasted pleadings within the ten days from December 3, 1936, come now Wichita Royalty Company and E. E. Scannell, its trustee, herein called Cross-complainants, and recast their pleading herein so that the cause of action hereinafter stated against the cross-defendants and impleaded defendants herein named, shall be as follows:

I.

Cross-complainants say that the cause of action herein asserted was first asserted by pleadings filed in the District Court of Wichita County, Texas, whence it was removed to this Court by petition and bonds filed by cross-defendants herein and others; that the suit involves no Federal question, involves no separable controversy, is not wholly between citizens of different states and is not otherwise within the original jurisdiction of this Court.

II.

Wichita Royalty Company and E. E. Scannell, its trustee, now complain of the City National Bank in Wichita Falls, J. T. Harrell, Trustee, L. H. Cullum, J. T. Harrell, Leslie Humphrey, Jack Jeffus, Oral Jones, Frank Kell,

Joe Kell, J. J. Perkins, C. W. Snider and F. P. Timberlake, and would respectfully show:

255 III.

That the City National Bank in Wichita Falls is a National banking institution and citizen of Texas, and domiciled in Wichita County; that J. T. Harrell, L. H. Cullum, Leslie Humphrey, Jack Jeffus, Oral Jones, Frank Kell, Joe Kell, J. J. Perkins, C. W. Snider and F. P. Timberlake are each resident citizens of Wichita County, Texas, and each a stockholder in and a director of the City National Bank of Wichita Falls, and have been such at all times hereinafter mentioned.

IV.

The City National Bank of Wichita Falls will herein be referred to as the "old bank" and the City National Bank in Wichita Falls will be referred to as the "new bank".

V.

Beginning in 1930, and continuously thereafter there were increasingly heavy withdrawals of deposits from the old bank and an increased lessening of its assets. Such had been the loans made of available funds as that the notes receivable were not collectible. The National bank examiner from time to time required the charging off of a large part of the listed assets of said old bank. The liquid assets of the bank became such as it was reasonably apparent that it could not continue to meet the demands of those withdrawing their funds. The old bank became insolvent and was insolvent on March 2, 1933, having closed its doors March 1, 1933, and having never been open for business again.

VI.

From and after March 1, 1933, the old bank ceased to transact business as a going concern. It being a corporation and a citizen of Texas, all of its assets immediately became a trust fund for the benefit of the creditors to be used solely and only for the payment of the debts of the corporation, and upon all of which assets its creditors had an equitable lien.

256 VII.

Among the creditors of the old bank March 1, 1933, were cross-complainants, to whom the old bank was justly indebted in the sum of $200,000.00.

VIII.

The directors of the old bank became trustees in possession of all of the assets of the insolvent corporation whose duty it was to see that such assets of the corporation were devoted to the payment of the debts of the corporation. They were not permitted to prefer one creditor over another, nor to assign or convey its assets free of equitable lien of the creditors thereto, which lien so existing was and continues to be dischargable only upon payment to the creditors in full or prorata from the funds received from the corporation property. The directors were charged with the duty of seeing that the creditors of the corporation were either paid in full or that they were paid prorata out of the funds received from the assets of the corporation.

IX.

Notwithstanding such duties imposed upon them by the common law as administered in Texas concerning an insolvent corporation, the defendant directors

breached such duties, and on March 15, 1933, transferred, assigned and pledged to the new bank all of its assets, the new bank assuming all liabilities of the old bank all of such assets having substantial value being transferred outright to the new bank and the assets of doubtful value being transferred and assigned to the defendant J. T. Harrell as trustee, under an instrument on its face making him the trustee for the benefit of the new bank.

X.

Prior to March 1, 1933 and at a time when the capital of the old bank had become impaired and it was obvious to the directors that large sums of new money would be required to restore such capital as an alternative for the closing of the bank, and for the purpose of protecting their rights and liabilities as directors and
257 stockholders of said bank, the defendant directors contributed more than $200,000.00 to the impaired capital of the old bank, their rights to receive reimbursement thereof being inferior in all respects to the rights of the general creditors of the bank to be paid in full.

XI.

Said defendant directors, after the closing of said old bank and when it was insolvent, caused the assets of the old bank to be applied not to the ratable payment of general creditors, but in excess of $200,0000.00 such assets were caused by the defendant directors to be applied to the formation and incorporation of the new bank of which they became stockholders and directors and to obligations created by the directors as individuals upon their contributing to the impaired capital of the old bank and to other purposes, in disregard and in prejudice to the debt justly due and owing Cross-complainant whose debt remains wholly unpaid and the defendant directors

have so handled the transactions between the two banks and have so disposed of the assets of the old bank as to render plaintiff's debts uncollectable unless the parties sued herein be required to respond in damages for the value of the assets diverted to purposes other than the payment of general creditors.

XII.

That as a result of the breach by the directors of their common law duty to administer the assets of the insolvent corporation as trustees for the benefit of the general creditors and their carelessness, negligence and gross mis-management of the affairs of the bank, if not an intentional disposition of its funds with a view to present a ratable distribution of its assets among creditors, all of such acts being participated in by the individuals sued herein, the general creditors of said bank have sustained losses aggregating the total of
258 their respective debts and cross-complainants have sustained a loss of $200,000.00.

XIII.

That the defendants herein, by transfer, sale and assignment, have placed the assets of the old bank beyond the reach of the creditors and thus destroyed the equitable lien thereon which cross-complainants had as of the date and during the insolvency of the old bank, which then was of the reasonable value of in excess of $200,000.00, but which has been lost and destroyed by reason of the acts and conduct of the parties defendant herein to cross-complainants' damage in the sum of $200,000.00.

Wherefore, alternative prayers are made in the order named:

1. That this suit be remanded to the State Court whence it came.

2. That cross-complainants do have and recover of and from the defendants, jointly and severally, their damages by reason of the facts hereinabove alleged, and that they have such other and further, general and special, legal and equitable relief to which they may be entitled.

KILGORE & ROGERS,
By GUY ROGERS,
Attorneys for Cross-Complainants.

The State of Texas,
County of Wichita.

E. E. Scannell, being sworn on oath, says that the facts stated in the above motion are true.

E. E. SCANNELL.

Sworn to and subscribed before me this 12th day of December, A. D. 1936.

GRACE JARNAGAN,
(Seal) Notary Public in and for Wichita County, Texas.

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## ANSWER OF CITY NATIONAL BANK IN WICHITA FALLS, ET AL.

Filed in U. S. Dist. Court Dec. 21, 1936.

259 (Title Omitted.)

The defendants, The City National Bank in Wichita Falls, a national banking association, J. T. Harrell, Trustee, L. H. Cullum, J. T. Harrell, Leslie Humphrey, Jack Jeffus, Oral Jones, Frank Kell, Joe Kell, J. J. Perkins, C. W. Snider, and F. P. Timberlake, come now and answer the cross complainant, Wichita Royalty Company's, recasted pleadings against them, filed herein on

the 12th day of December, 1936, and for such answer plead as follows:

I.

These defendants adopt the answer filed herein to the cross complainant's recasted pleadings and cross action against The City National Bank in Wichita Falls, J. T. Harrell, Trustee, E. A. Deaton, Liquidating Agent, et al, and plead said answer in so far as same herein applies to the allegations in this cross bill of complaint.

II.

Further answering said cross complaint against these interpleaded defendants, they plead as follows:

In answer to paragraph numbered three of said cross complaint, these interpleaded defendants admit the allegations contained in said paragraph numbered three thereof.

260 III.

Answering paragraph numbered five of said cross complaint, these interpleaded defendants admit that prior to March, 1933, and due to the general state of unrest and the panic which existed over the Nation and the world, there were heavy withdrawals from The City National Bank of Wichita Falls, the old bank; that the withdrawals did not increase or lessen the relative value of the assets remaining, but did require said bank to liquidate its loans and other assets to meet such withdrawals. They deny, however, that the said bank became insolvent on March 2, 1933, and say that the closing of its doors was due to a presidential proclamation closing the doors of all banks in the Nation, due to the financial condition then existing and the heavy run on banks in general.

IV.

In answer to paragraph numbered six, these interpleaded defendants admit that after March 4, A. D., 1933, the old bank ceased to transact business as a commercial banking institution. They admit that it was a corporation created under the laws of the United States of America and as such was a citizen of Texas, as such is defined under Subdivision 16, Section 41, Title 28, U. S. C. A. But this suit involves the winding up of the affairs of a national bank and arises also under the laws of the United States of America, and said bank is therefore, for the purposes of this suit, a corporation created under the laws of the United States.

These interpleaded defendants deny that the assets of said bank upon the closing of its doors immediately became a trust fund for the benefit of the creditors, or that the law applicable thereto was ruled by the State laws, but say that the question of whether such
261 funds were trust funds is governed solely by the laws of the United States of America.

V.

In reply to paragraph numbered seven, these interpleaded defendants deny that the cross complainants were, on March 1, 1933, creditors of it, or that said old bank was indebted to said cross complainants in the sum of $200,000.00, or in any other sum; but on the contrary these interpleaded defendants say that on said date the cross complainants were indebted to the old bank in the principal sum of $22,000.00, evidenced by a promissory note executed by Wichita Royalty Company and payable to said old bank, and in addition thereto were further indebted to said old bank in the principal sum of $14,596.00, being the balance of a deficiency due said old bank on a note of The Texas Investment Company, upon which the cross complainant was liable as indorser.

VI.

In reply to paragraph numbered eight, these interpleaded defendants deny that the directors of the old bank became trustees by reason of the insolvency of said bank, and deny that said bank was on the date it closed its doors insolvent. In this connection, these interpleaded defendants say that on the date aforesaid they did undertake to pay all depositors, as well as creditors who were shown to be such by the books of said bank, on March 15, A. D., 1933, and to this end the directors sued herein by the cross complainants caused the new bank to be organized and an entire capital to be paid in and caused a contract to be made between the old bank and the new bank, copy of which is attached to the bill of complainant filed by the old bank against the Wichita Royalty Company, et al, and marked Exhibit "D", and which contract, among other things,
262 required the new bank to assume the deposit liability of the old bank as shown by its books at the close of business on March 14, 1933, which deposits were in the aggregate sum of $3,286,707.46, together with an additional sum of $556,500.00, bills payable owing by said old bank; that no other liabilities were assumed by the new bank; and to protect the new bank against loss a pledge was made of the remaining assets of the old bank.

These interpleaded defendants deny that any debt existed in favor of the cross complainants, or that they were charged with any duty in respect to the alleged claimed indebtedness herein sued upon.

VII.

In answer to paragraph numbered nine, these interpleaded defendants deny that the laws of the State of Texas control the administration of the affairs of an insolvent national bank, and say that the affairs of an insolvent national bank are governed by the national

laws, that is to say, the laws of the United States; and they deny that the director defendants breached any debts devolved upon them by the laws of the United States or the laws of the State of Texas, but say that they fairly and honestly administered the affairs of the old bank so that all creditors and depositors have been fully paid, except a deficiency note owing by the old bank to the new bank, which note is now in the sum of $189,000.00, and which is secured by a pledge of all of the remaining assets of the old bank, including the obligation owing by the cross complainants to said old bank. They deny that the new bank assumed all of the liabilities of the old bank, but only such liabilities as were shown by the books of the old bank on March 14, A. D., 1933. These interpleaded defendants also deny that all the
263 substantial assets of the old bank were transferred outright to the new bank, but say that there was a transfer of substantial assets of the value of $3,455,613.43; that there remains substantial assets of the old bank, which remaining assets were pledged to secure the new bank in the difference between the value of the assets transferred and the amount of the indebtedness assumed by the new bank; that this difference has been reduced to $189,000.00 and is wholly secured by said pledge.

VIII.

These interpleaded defendants in reply to paragraph numbered ten admit that the capital of the old bank became impaired on and prior to March 1, 1933; they admit that they assisted in the restoring of confidence by the loan of their credit in the way of indorsements and guarantees, but did not contribute any actual cash to the capital of the old bank and have never received any sums whatever from the old bank in respect to any such alleged contributions. In this respect these interpleaded defendants say that in order to restore confidence and to fully protect the depositors of the old bank

and to allay their fears for the safety of their funds, the individual stockholders, who are made parties defendant to the cross action herein, created a new bank and contributed an entire capital thereto, except such as was sold by way of preferred stock to Reconstruction Finance Corporation; that after the creation of said new bank, referred to in the foregoing, a contract was made by the old bank, which contract was made with the full approval of the Comptroller of Currency of the Federal Reserve Bank and the Banking Department of the United States of America. This contract provided for
the purchase of certain assets by the new bank
264 from the old bank and the assumption of certain liabilities by the new bank owing by the old bank. The contract was fairly made, was approved by the directors of both banks, by the Comptroller of Currency and the Department of Banking of the United States, and did not require the assumption of any obligations on the part of the new bank other than obligations named in said contract and did not include the alleged liability sued upon herein by the cross complainants.

IX.

In reply to paragraph numbered eleven, these interpleaded defendants say: They deny the insolvency of the old bank at the date of the contract in question was made; they deny that $200,000.00 of the assets of the old bank were used as a contribution to the capital of the new bank, and further deny that there was any repayment from the assets of the old bank to any individual director or stockholder, upon any contribution to capital.

They deny that there was any act of prejudice or unfair dealing to any creditor of the old bank in respect to the formation and handling of the affairs of the two banks. They further deny that the old bank owes any debt to the cross complainants herein.

X.

In reply to the paragraph numbered twelve, these interpleaded defendants deny that they have breached any duty, common law or otherwise, to administer the assets of The City National Bank of Wichita Falls (the old bank), or that they were trustees, or that they were guilty of any carelessness or negligence or guilty of gross mismanagement or were guilty of any intentional disposition of its funds with a view to prevent a ratable distribution of its assets among its creditors. They
265 deny that the general creditors of said bank have sustained any loss or that the cross complainants have sustained any loss in the sum of $200,000.00, or any other sum.

XI.

In answer to the paragraph numbered thirteen, these interpleaded defendants deny that the sale, transfer, and assignment of the assets of the old bank has placed same beyond the reach of the creditors, but say that said sale was to effect the payment of the creditors of the old bank, as shown by the contract of March 15, 1933; and they deny that the said cross complainants ever had any equitable lien on the assets of the old bank, or that it was insolvent; and they deny that said cross complainants have lost any lien and that they ever had any lien, and deny that the said cross complainants have been damaged in the sum of $200,000.00, or any other sum.

XII.

By way of affirmative plea and defense these interpleaded defendants respectfully show with respect to the claims against the defendant directors of the new bank that all the transactions complained about were had on or about March 15, A. D., 1933; that the organization of the new bank and the fact that the old bank had gone into voluntary liquidation was fully known to Scannell and Wichita Royalty Company, or could have been known

upon the slightest of inquiries; that publication was made of the notice of the old bank going into voluntary liquidation in the local newspapers of Wichita Falls, Texas.

and the local newspapers of Wichita Falls, Texas,
266 fully reported the formation of the new bank.

Therefore, these interpleaded defendants charge that the cross complainants knew, at the time, all that happened in respect to the organization of the new bank, its contract with the old bank, and the old bank's going into voluntary liquidation. Notwithstanding such, no attack was made thereon and no attempt was made to hold the defendant directors and the new bank liable upon any theory of dereliction in their duties as alleged trustees for the creditors of the old bank from and prior to March 15, A. D., 1933, and June 18, A. D., 1936; and because of such the cross complainants are barred by laches and limitations and the equitable doctrine of stale demand, which these interpleaded defendants plead in bar of the cross complainants' right to recover herein.

Wherefore, interpleaded defendants pray that cross complaint against them be dismissed and for such other relief in equity as they may be entitled to.

WEEKS AND MORROW,
BULLINGTON, HUMPHREY & KING,
Attorneys for the Interpleaded Defendants, The City National Bank in Wichita Falls, et al.

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CROSS COMPLAINT AGAINST THE WICHITA ROYALTY COMPANY, E. E. SCANNELL, TRUSTEE, AND THE CITY NATIONAL BANK OF WICHITA FALLS, TEXAS:

The City National Bank in Wichita Falls, a national banking corporation, presents this its cross bill of com-

plaint herein against the Wichita Royalty Com-
267 pany, a trust estate, and E. E. Scannell, its trustee, together with The City National Bank of Wichita Falls, Texas, a national banking corporation, now in liquidation, and for cause of action says:

I.

Wichita Royalty Company and its trustee is indebted to The City National Bank of Wichita Falls, Texas, upon two promissory notes, fully set forth and described in the bill of complaint filed by The City National Bank of Wichita Falls herein against the Wichita Royalty Company, which indebtedness aggregates, with interest, the sum of $60,000.00, and which indebtedness is unpaid.

That on March 4, A. D., 1933, pursuant to a presidential proclamation, The City National Bank of Wichita Falls closed its doors to the transaction of business; that during the bank holiday, which ended March 15, 1933, The City National Bank in Wichita Falls was created as a national banking association, with license to do business, and that The City National Bank in Wichita Falls made a written contract and agreement with The City National Bank of Wichita Falls, whereby The City National Bank of Wichita Falls transferred to The City National Bank in Wichita Falls certain of its assets outright and made a written pledge of its remaining assets, to satisfy, secure and pay The City National Bank in Wichita Falls in the assumption of certain deposits, liabilities, and bills payable assumed in said contract, a copy of which contract is attached to plaintiff's bill of complaint filed herein and marked Exhibit "D"; that said contract was fairly made, approved by the directors of said two banks, by the Comptroller of the Currency, and the Department of Banking of the United States, and that said contracts was duly consummated; that among the assets assigned as
268 a pledge to secure the payment of the difference between the value of the assets assigned to the

new bank and the amount of the indebtedness assumed by the new bank were the obligations of cross complainants herein sued upon.

II.

Following the making of said contract, The City National Bank of Wichita Falls, pursuant to the statutes and laws of the United States of America and a resolution and act of the stockholders of said bank, went into voluntary liquidation; that C. E. Basham was appointed liquidating agent and continued to act as such until January 8, A. D., 1935, at which time he resigned and E. A. Deaton was duly selected in the manner provided by law and has continued to act as liquidating agent of said bank since that time.

III.

That The City National Bank of Wichita Falls at the time of the execution of said contract of March 15, 1933, executed a note to The City National Bank in Wichita Falls for the amount of the difference between the face value of the assets transferred and the debts assumed, which note was secured by a pledge of the remaining assets of said bank, including the obligations of the Wichita Royalty Company here sued upon; that said note has been reduced to the sum of $189,000.00 under the liquidation of said bank.

IV.

That among the amount pledged were the entire assets of The Texas Investment Company, which consisted of approximately 200 residential lots in Wichita Falls, Texas, in the vicinity of the new Junior College, and being the property known as the Marlborough Addition
269 to the City of Wichita Falls, and in addition thereto various other lands and properties, real

estate, and personal property situated in Wichita County, Texas, and elsewhere; that E. A. Deaton as liquidating agent has continued to orderly liquidate the assets of The City National Bank of Wichita Falls and apply the proceeds received threfrom to the payment of the indebtedness due by said bank to the new bank, and that said bank has been in orderly liquidation up until the time of the filing of the cross action herein by the Wichita Royalty Company against The City National Bank of Wichita Falls and this bank and its directors.

V.

That on June 18, 1936, said cross complainant, Wichita Royalty Company, and E. E. Scannell, Trustee, filed in the District Court of Wichita County, Texas, 30th Judicial District, a cross action and interpleader against The City National Bank of Wichita Falls and its liquidating agent and against this bank and its directors and against J. T. Harrell, Trustee, under the pledge agreement aforesaid and claimed an indebtedness upon deposit liability of $200,000.00. This suit so filed by the cross complainants attacked as void and fraudulent the transfer of assets from the old bank to the new bank and the pledge of the remaining assets as security for the difference between the value of the assets assigned to the new bank and the amount of the indebtedness assumed by the new bank, as aforesaid, and asked for an accounting and the winding up of the affairs of the old bank. The Texas Investment Company was likewise made a party to said suit and its title was attacked by said cross action. A notice lis pendens of said suit was filed and is still pending and is of record in the office of the County Clerk of Wichita County, Texas, being duly recorded on
270 June 19, 1936, said notice lis pendens giving notice of said suit of Wichita Royalty Company against the old bank and the new bank, the liquidating agent, The Texas Investment Company, and the trustees of the new bank and against J. T. Harrell as trustee under the pledge agreement, and they claimed an indebtedness

due of $200,000.00, copy of which lis pendens notice is attached to the bill of complaint, marked Exhibit "E" and is here referred to, which lis pendens notice creates a cloud upon the title to the whole of the property situated in Wichita County, Texas, held by the old bank and the liquidating agent and J. T. Harrell, Trustee, and has seriously impaired and has rendered impotent the power of the said E. A. Deaton as liquidating agent to further orderly liquidate the assets of the old bank. This cloud is outstanding by virtue of said notice lis pendens, and it therefore becomes necessary to wind up the affairs of The City National Bank of Wichita Falls in this proceeding and to determine the validity under the laws of the United States of America relating to national banks of the transfer and pledge of the assets of the old bank to the new bank.

VI.

The City National Bank in Wichita Falls, the new bank, further charges and claims that the transfers made by the old bank to the new bank are valid and legal and were made without fraud; that The City National Bank of Wichita Falls is duly indebted to this bank in the sum of $189,000.00; that said indebtedness is secured by a pledge of the notes sued upon by complainant, The City National Bank of Wichita Falls, and owing by the Wichita Royalty Company, together with the other remaining assets of the old bank.

271 VII.

That owing to the condition of the title and by virtue of the pendency of the cross complaint against the old bank and the new bank, the liquidating agent of the old bank, and J. T. Harrell, Trustee, and the notice lis pendens thereof, it is impossible to orderly wind up the affairs of the old bank except in this proceeding. It is impossible for the liquidating agent (on account of the claimed indebtedness by Wichita Royalty Company herein) to

sell and convey good title to the assets of the old bank pledged to J. T. Harrell, Trustee, or to disburse funds received from sale and liquidation and collection of such assets. Therefore, an order winding up the affairs of the old bank is required in this proceeding, as well as a determination of the validity of the transfers made by the old bank to the new bank, under the laws of the United States, particularly Section 181, Title 12, U. S. C. A.

Wherefore, premises considered, The City National Bank in Wichita Falls, complainant in this cross action, prays for the establishment of the validity of the pledge agreement wherein the remaining assets of the old bank, including the obligations of the Wichita Royalty Company, were pledged to this bank as security for its deficiency note and for the foreclosure of such pledge and further determination of the validity of the transfers, pledges, assignments, and conveyances made by The City National Bank of Wichita Falls to The City National Bank in Wichita Falls, pursuant to the contract of March 15, 1933, and for removal of the cloud cast upon its title to said assets by the claims of the plaintiffs, Wichita Royalty Company and E. E. Scannell, Trustee, and further for the establishment of its indebtedness against the said Wichita Royalty Company and E. E. Scannell, Trustee, and for the fixing and enforcement of the deficiency,
272 if any deficiency should appear, as against said Royalty Company and said Scannell, and for a winding up of the affairs of The City National Bank of Wichita Falls and for the enforcement of all of its rights growing out of said winding up of the affairs of said bank, and complainant prays for such other and further relief, both general and special, as it may be entitled to under the facts in a Court of Equity.

WEEKS AND MORROW,
BULLINGTON, HUMPHREY &
KING,
Attorneys for The City National Bank in Wichita Falls.

The State of Texas,
County of Wichita.

Leslie Humphrey, attorney for the interpleaded defendants, being duly sworn, says that he has read the foregoing answer and cross-action; that he is attorney for the parties thereto, and that the statements of facts therein contained are true and the statements upon information and belief as to facts as therein stated are verily believed by him to be true.

LESLIE HUMPHREY.

Sworn to and subscribed before me, this 21st day of December, A. D. 1936.

MRS. GERTRUDE TURNER,
(Seal) Notary Public, Wichita County, Texas.

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ANSWER OF J. T. HARRELL AND THE TEXAS INVESTMENT COMPANY TO THE CROSS-PETITION FILED AGAINST THEM, INDIVIDUALLY, BY THE WICHITA ROYALTY COMPANY.

Filed December 23rd, 1936.

273 (Title Omitted.)

Defendants, J. T. Harrell and the Texas Investment Company come now and answer cross-complainant, Wichita Royalty Company's cross action and cross complaint filed against these answering defendants, and for such answer plead, as follows:

I.

These defendants adopt the affirmative defenses heretofore plead by them and the other inter-pleading defendants in their reply to the cross action filed by the

Wichita Royalty Company and E. E. Scannell, its trustee, against the City National Bank of Wichita Falls, Texas, J. T. Harrell, Trustee, E. A. Deaton, Liquidating Agent and W. H. Peckham, Administrator of the estate of G. W. Peckham, deceased, Hazel D. Peckham, surviving wife of G. W. Peckham, deceased, William Peckham and George Peckham, minors, and Robert Peckham, sole surviving children of G. W. Peckham, deceased, and the Texas Investment Company, and replead all the affirmative defenses in said answer in reply to the cross action and cross complaint here presented.

274 II.

Much of the matters contained in the cross action against these individual defendants is but a repetition of the facts pleaded in the cross action against the City National Bank of Wichita Falls, and others, and these defendants adopt each and all of the defenses, pleas and replies, which they have made to the cross action of the cross-complainant, Wichita Royalty Company, in their answer aforesaid, and adopt the same.

III.

Answering, seriatim, said cross complaint, these complainants plead as follows:

These defendants admit the citizenship of the parties as alleged in paragraph II, except they deny that the Texas Investment Company is a dissolved corporation. They say it is a corporation duly incorporated and in good standing.

IV.

Replying to paragraph III of said cross-complaint, these defendants admit the allegations therein contained.

V.

Replying to paragraph IV, these defendants say that J. T. Harrell and G. W. Peckham were joint owners of certain real estate, principally of which was the property known as the "Marlborough Addition, near Wichita Falls, and this was the extent of their business association; admit that G. W. Peckham was trustee of the Wichita Royalty Company, say that J. T. Harrell was an active officer of the plaintiff, Bank, but was not the chief active officer; that he probably had more actual authority, but there were other officers who assisted in the management of the Bank's affairs, the directors; that the tract referred to as "a large suburban venture" was the Marlborough Addition, a tract of about sixty-six acres of land, near the city of Wichita Falls,
275 Texas, and the Curlee tract was a small farm near Wichita Falls, Texas, owned by J. T. Harrell, C. E. Basham and G. W. Peckham; the undivided ownership in the Stephens Royalty arose only in this manner. J. T. Harrell and C. E. Basham owned, each, an undivided 1/4th interest in the Stephens royalty. In the latter part of 1925, or the first part of 1926, they sold a one-fourth interest to G. W. Peckham for a consideration of $30,000.00; and a few weeks later sold their remaining interest to the Wichita Royalty Company, for a consideration of approximately $25,000.00; they were joint owners only; in the interim, between the first sale to G. W. Peckham and the second sale to the Wichita Royalty Company, being only a few weeks. As to the exact amount of indebtedness pleaded in said paragraph IV, these defendants are without information to accurately state the same, but do say that G. W. Peckham owed the Bank substantial sums and that J. T. Harrell was also indebted to the Bank; that J. T. Harrell and G. W. Peckham, together with J. A. Kemp and W. H. Peckham were jointly and severally liable to the Highland Irrigation Company upon certain purchase price notes for the purchase of the Marlborough Addition; that it was not.

in fact a partnership. but a joint-venture in the purchase of said real estate; the amount of such indebtedness owing to the Highland Irrigation Company was substantial, but these defendants are without accurate knowledge at this time to say as to the exact amount thereof; they deny that J. T. Harrell was the personal banker of G. W. Peckham, unless it could be said that his business deals with the City National Bank, of which J. T. Harrell was an officer would make J. T. Harrell such personal banker; as to the allegation that Peckham would have told Harrell anything with respect to his business, or that the former should have asked, is purely conjectural and speculative, and therefore, they deny this allegation; as to the custom and practice of the Bank in general, defendants say that, sometimes a banker inquires as to the purpose of a loan and at other times he does not,
and that there was no general custom in such
276 respect, and therefore, deny such allegation.

VI.

In reply to paragraph V, these defendants say that the same is a conclusion, except they admit that C. E. Basham and J. T. Harrell sold to the Wichita Royalty Company a one-fourth interest in the Stephens Royalty; they deny that the consideration was as stated, but say that the consideration for such sale was the sum of $22,-201.32 cash, and G. W. Peckham's interest in the Curlee land was the reasonable value of $3557.75, and deny that the agreed value was placed on the Curlee land at the time of the sale.

VII.

Answering paragraph VI, these defendants say they are without sufficient knowledge to accurately state the deposit balance on the date mentioned, or as to the matters relating to the drawing of a check for $5000.00,

but deny that the individual account which the cross-complainant calls "a commingled account" consisted solely of trust funds, and say that there was no payment on said date of trust funds to the Highland Irrigation Company, neither was there any payment of trust funds by G. W. Peckham out of his individual account for the purchase of the Curlee land.

VIII.

Replying to paragraph VII of said cross-complaint these defendants deny that the individual account of G .W. Peckham on January 12th, consisted solely of trust funds, but say that he had more than the sum of $454.50 of his individual money without causing any sums transferred from the Royalty Company.

IX.

Replying to paragraph VIII, these defendants admit the allegation contained therein and say that they have effectually explained the transaction in their answer on behalf of the City National Bank of Wichita Falls, Texas, and others; that is to say, that the loan was properly made after banking hours and that the intervening day was probably a holiday and the credit of
277 individual ledger was not made until the succeeding day.

X.

Answering paragraph IX, these defendants say:

They deny that the sum of $1,362.87, or any other sum paid C. E. Basham and J. T. Harrell consisted solely of trust funds, and say that the said check or payment to Harrell and Basham of $2201.32 was a payment upon the Stephens Royalty, the title to which was taken in the name of Wichita Royalty Company.

XI.

Answering paragraph X of said cross complaint, these defendants say they are without information as to what the royalty records show as E. E. Scannell kept them. They deny that G. W. Peckham's personal balance at close of business on January 18th, in the amount of $18,765 87 was trust funds; say that the balance on deposit on said date was Peckham's individual money.

XII.

Replying to paragraph XI, these defendants say they deny that G. W. Peckham's account on said date mentioned consisted of trust funds. They say that the payment to Harrell and Basham, on January 25th, was payment upon the Stephens Royalty purchase made for the Wichita Royalty Company, and that J. T. Harrell and C. E. Basham were entitled to one-half of said payment, as it was their property. As to whether the defendant, J. T. Harrell paid his debt, or his portion of it to said Bank, these defendants say that he had the right to pay his debts from such funds, even though it did leave his personal balance only $186.29. As to these figures, these defendants say that they have not checked them up to see if they are correct, but assume they are.

278

XIII.

In reply to paragraph XII, these defendants say that Harrell and Basham executed a deed to the Wichita Royalty Company for the Stephens Royalty, on the date mentioned pursuant to a prior contract for the trustee to buy the same, but the consideration was not as alleged in paragraph XI, but the true consideration was the sum of $22,201.32 cash, and the transfer of the interest in the Curlee land which was worth more than $2,407.00.

XIV.

Replying to paragraph XIII, these defendants say that Harrell and Basham sold some valuable property to the Wichita Royalty Company; they deny that Harrell and Basham loaned G. W. Peckham the money, but loaned the money to the Wichita Royalty Company, and that J. T. Harrell and C. E. Basham sold said property for less than it was actually worth at said time; that they sold the property for a consideration of Twenty-two Thousand oc 1 dollars cash, and a transfer of G. W. Peckham's interest in the Curlee land, and that they knew nothing about any private gain that Peckham made in the transaction, but that the property was sold to the Wichita Royalty Company in good faith, without any knowledge on their part that G. W. Peckham was making any personal gain in the transaction; that if Peckham did make any personal gain in the transaction, he alone would be responsible to the Company therefor; that the property has paid in oil produced, and from the sale price, far in excess of the amount paid by the Wichita Royalty Company. That the allegation as to what Harrell testified is not an allegation of fact, and should be stricken; that the payment of $10,028.00 mentioned was a payment on part of the purchase price of the Stephens Royalty, which was sold to the Wichita Royalty Company.

279 XV.

Replying to paragraph XIV, these defendants say that the check mentioned was a salary check by the Wichita Royalty Company to G. W. Peckham; that the check for $5100.00 was the payment by G. W. Peckham to J. T. Harrell and C. E. Basham from the sale of 1/4th interest of the Stephens Royalty made to Peckham, which was a sale made prior to the sale of the 1/4th interest to the Wichita Royalty Company. They deny that any sum of the $5100.00 paid the bank's officers was from

the proceeds of moneys transferred from the Royalty Company's account, or that any part of the $550.00 was for funds received from the Royalty Company's account.

XVI.

Replying to paragraph XV, these defendants say that the check for $400.00 mentioned was merely a salary check due G. W. Peckham; that there was no relationship whatever between the payment of the $21,000.00 and Harrell's payment of his personal debt to the bank, of $10,000.00, and that said allegations are merely an attempt to create a prejudicial inference, which should be stricken.

XVII.

Answering paragraph XVI, these defendants say they are without information as to the exact amount G. W. Peckham owed the Bank on March 1, 1926, but that it was a substantial sum of money and they are without information as to the exact amount of personal balance of G. W. Peckham, or as to J. T. Harrell's exact indebtedness, but say that G. W. Peckham did owe the Bank and J. T. Harrell owed the Bank, and that G. W. Peckham and W. H. Peckham, as well as J. T. Harrell and J. A. Kemp were jointly obligated upon the notes to the Highland Irrigation Company for the purchase of the property known as the Marlborough Addition, and that W. H. Peckham was also indebted to the Bank, as he was generally a borrower as well as a depositor; all of the parties were customers of the Bank and the fact that they owed the Bank was no reflection upon the bank's business judgment, nor the parties' integrity who owed the same.

280

XVIII.

These defendants in reply to paragraph XVII, say that G. W. Peckham, for and on behalf of the Wichita Royalty

Company, borrowed the sum of $25,000.00, as alleged, and that said sum was credited to its account; that neither of these defendants were charged with investigation as to what G. W. Peckham, as trustee, would expend the moneys for; they believed and had the right to assume that such expenditures would be rightful. While J. T. Harrell never had any actual knowledge of the transactions complained of until after the institution of this suit, and then only by reference to the records, they say that no funds were received by them belonging to the Wichita Royalty Company; that the payment of the check of $5060.00 was in part payment of the sale by Harrell and Basham to the Wichita Royalty Company of the Stephens Royalty, and that the payment by W. H. Peckham to the Bank was from his own personal account and personal funds, and these defendants further plead in reply to paragraph 23 of the cross-complainants' action against the City National Bank of Wichita Falls, et al., set forth in paragraph 24 of said answer, in reply to this paragraph XVII, and deny that any sum was received by these defendants, or by their Bank upon any personal indebtedness owed by G. W. Peckham, which consisted of trust funds.

XIX.

Replying to paragraph XVIII, these defendants deny that the Marlborough property affairs were handled and administered by Harrell and Peckham. They say that after Peckham purchased W. H. Peckham's interest, that J. T. Harrell and J. A. Kemp continued as joint owners, and the Marlborough properties were handled by Peckham; Harrell and Kemp acting only in an advisory capacity.

281 XX.

Answering paragraph XIX, these defendants admit that Peckham had funds; as to whether they were large

funds or not, at his disposal, this term is a relative term, and they also admit that the purchase price for the balance of the property known as the Marlborough Addition required the expenditure of substantial sums of money and that the defendant, J. T. Harrell, concurrently and promptly paid his pro rata part thereof, and that as to whether G. W. Peckham was unable to pay his part thereof or not, these defendants do not admit or deny. They say that they were not aware of the fact at any time until after the death of G. W. Peckham that the Wichita Royalty Company actually owned one-half of said property.

XXI.

Answering paragraph XX, these defendants say that the Marlborough properties were actually owned (which fact was unknown to them) by the Royalty Company, which fact Scannell well knew as the deed had been delivered to him. In this connection, these defendants deny that the transfers as alleged were made so that Peckham could pay his private debts to J. T. Harrell or the Bank.

XXII.

Answering paragraph XXI, these defendants are without information to say whether the sum of $57,219.44 is a correct statement of the amount of said checks, but say that substantial sums were necessary for the purchase price for the interest in the Marlborough Addition owned by the Wichita Royalty Company, and that said Company never paid any more than its pro rata part,
and in as much as J. T. Harrell and J. A. Kemp
282 paid at all times their pro rata part of the indebtedness due thereon, they believed that Peckham was the owner of the other one-half interest in the property, and it later developed that it was owned by the Wichita Royalty Company (that is, after Peck-

ham's death) and the funds were, therefore, rightfully expended, and that there was a true and valuable consideration moving to the Wichita Royalty Company for such expenditure, it being the actual owner of one-half interest in said property, all of which fact was well known to E. E. Scannell, as well as G. W. Peckham, but unknown to the defendant, J. T. Harrell; that J. T. Harrell had no knowledge of any wrongful or unauthorized expenditure of the funds of the Wichita Royalty Company in said connection, and owed no duty to supervise Peckham's conduct as trustee of the Wichita Royalty Company, and these defendants deny that J. T. Harrell ever loaned substantial sums of money to the Wichita Royalty Company in order that G. W. Peckham might obtain the same, by transfer thereof to his private account.

XXIII.

Answering paragraph XXII, these defendants say:

These defendants deny that G. W. Peckham with the knowledge, consent and active participation on the part of the defendant, J. T. Harrell, made a profit out of the sale by Harrell and Basham to the Wichita Royalty Company of the Stephens Royalty, and from the proceeds of a loan made by Harrell on behalf of the Bank, and that Harrell was paid any part of the money above set out. These defendants say that they have fully set forth the transactions concerning the Stephens Royalty Company in their answer to the cross action against the City National Bank of Wichita Falls, and in paragraphs 24 and 25 of said answer, and adopt the same in reply to this paragraph.

283 XXIV.

Answering paragraph XXIII, these defendants deny that G. W. Peckham, as Trustee of Wichita Royalty Company, withdrew the trust account and applied the sum

of $200,000.00 to unauthorized purposes, or that the records of the Bank show such matters, and deny that G. W. Peckham accomplished any mis-appropriations through the facilities of the City National Bank of Wichita Falls, and the defendant, J. T. Harrell, with knowledge and notice possessed by Harrell of such fact. They deny in toto the allegations contained in paragraph XXIII aforesaid. That Harrell never cooperated with Peckham in respect to the matters therein alleged; in fact, he knew nothing about Peckham's checks as trustee of the Wichita Royalty Company on said Bank; he never inspected the checks or withdrawals; he was an executive officer of said Bank; the duty of paying the checks devolved upon the teller of the Bank and that all the checks that were paid were paid upon the genuine signatures of either G. W. Peckham, or E. E. Scannell, both of whom had authority to draw checks upon the account of the Wichita Royalty Company, and that the defendant, Harrell, never had any knowledge or suspicion that Peckham was committing any breach of trust in respect to the withdrawal of such funds.

XXV.

In reply to paragraph XXIV, these defendants admit that the Texas Investment Company was created as a corporation to take over the properties and assets of the Marlborough Addition; that the charger was drawn and prepared before the death of G. W. Peckham, who signed the same as one of the joint owners; they deny that the corporation was dissolved, say that the fact that it failed to pay its franchise tax did not show a dissolution, but that the franchise tax due the State of Texas has been paid in full, and said corporation is in good standing.

284 XXVI.

The defendants deny that the Wichita Royalty Company holds title to property actually owned by G. W.

Peckham against which it has a lien; but the property is held by the Wichita Royalty Company or owned by it; that Scannell knew of it, and all the times inquired about. He accepted the property after he became substitute trustee, and that the Wichita Royalty Company is the owner and not the lienholder of said property; and since the Wichita Royalty Company is the owner and has held said property since it acquired the same, using the proceeds therefrom, is therefore estopped to deny that it holds the same only as a lienholder, or that either J. T. Harrell or the Bank is liable to the Wichita Royalty Company for the purchase price and investment of said properties.

The defendants deny that any necessity exists for an accounting between the parties, or that each party should state an account, and deny that either of these defendants has ever received any trust money of the Wichita Royalty Company, or is indebted to it in any sum whatsoever.

XXVII.

These defendants in reply to paragraph XXVI, say they deny that the law of the case has been fixed and determined by the decision of the Supreme Court of Texas, as set down in the mandate on file herein.

XXVIII.

By way of affirmative defense, these defendants, especially J. T. Harrell, say in respect to each and all the items both prior to 1925 and subsequent thereto, that all of such transactions were known to the Wichita Royalty Company and its active officers; that G. W.
285 Peckham was the sole representative of the Wichita Royalty Company (except E. E. Scannell, who kept the books and was secretary-treasurer thereof) and that such information as G. W. Peckham had was therefore imputed to the said shareholders, and that said shareholders had such information at hand, or

by the use of ordinary diligence could have discovered each and all the facts which they now allege, more than two years prior to the filing of its cross-petition herein and these defendants, especially the defendant, J. T. Harrell, here and now assert that said claim is barred by the two year statute of limitation, and that said statute of limitation bars any right which the cross-complainant, Wichita Royalty Company, and E. E. Scannell, its trustee, may now have herein.

These defendants, and especially the defendant, J. T. Harrell, further plead that all the facts hereinabove alleged were known, or could by the use of ordinary diligence, have been known to the Wichita Royalty Company, its officers and shareholders, more than four years prior to the filing of this suit. There was no concealment of any kind on the part of J. T. Harrell or the other defendants, and these defendants plead the bar of the four year statute, and say that this suit was not filed within four years from the time the cause of action accrued, and that such claim, if any, the said cross-complainants ever had is barred by said statute.

These defendants further say that the facts asserted by the Wichita Royalty Company occurred during the lifetime of G. W. Peckham; that the Wichita Royalty Company and its officers and members thereof, prior to the death of G. W. Peckham, knew all the facts now alleged as a cause of action against these defendants, or had sufficient information and knowledge that
286 by the use of ordinary diligence they could have discovered each and all the facts which they now allege and assert, prior to the death of G. W. Peckham; that these defendants, especially J. T. Harrell, are guilty of no concealment and no misrepresentation to prevent the Wichita Royalty Company from discovering such facts, and that since the death of G. W. Peckham which occurred in November, 1929, these defendants are not in position to have the explanation of G. W. Peckham explaining each and all of said items now charged by

the Wichita Royalty Company against G. W. Peckham were divers and numerous, and that had G. W. Peckham lived and this lawsuit brought during his lifetime, these defendants would have had the benefit of such explanations and evidence that G. W. Peckham possessed; therefore, the Wichita Royalty Company is guilty of laches and stale demand in failing to bring this lawsuit or to assert its purposed cause of action during the lifetime of G. W. Peckham.

All the facts as hereinbefore alleged, which are made the basis of this suit were known by the Wichita Royalty Company and its constituent members; they had knowledge of these facts, or had sufficient knowledge and notice that a reasonable inquiry would have given them knowledge of all the facts, and it was their duty, having placed G. W. Peckham in charge of its affairs, to have obtained such knowledge and had such knowledge, and, had such suit been brought within the lifetime of G. W. Peckham, these defendants would have, as aforesaid, had the benefit of such explanations and reasons that the deceased G. W. Peckham had, and by the failure of the Wichita Royalty Company, and its substitute trustee, to assert its cause of action during the lifetime of Peckham, it is now forever estopped to assert by reason of the equitable doctrine of laches and stale demand, which these defendants plead, in addition to limitation in bar of cross-complainants' right to recover herein.

Wherefore, premises considered, these defend-
287 ants pray that the cross complainants take nothing against them and that the cross bill be dismissed.

T. R. BOONE,
Attorney for J. T. Harrell.
WEEKS & MORROW,
BULLINGTON, HUMPHREY & KING,
Attorneys for Texas Investment Company.

The State of Texas,
County of Wichita.

Before me, the undersigned authority, on this day personally appeared J. T. Harrell, individually, and E. A. Deaton, President of the Texas Investment Company, a corporation, who being by me duly sworn upon their oaths, depose and say that they have each read over the foregoing answer and that the facts set forth therein are true and correct.

Witness our hands this 22nd day of December, A. D. 1936.

J. T. HARRELL.
E. A. DEATON.

Subscribed and sworn to before me, this 22nd day of December, A. D. 1936.

L. A. WARD,
(Seal) Notary Public, Wichita County, Texas.

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## CITY NATIONAL BANK OF WICHITA FALLS, ET ALS' ANSWER TO THE CROSS BILL OF THE WICHITA ROYALTY COMPANY.

Filed December 21, 1936.

288 (Title Omitted.)

The interpleaded defendants, City National Bank in Wichita Falls, a national banking association, J. T. Harrell, Trustee, L. H. Cullum, J. T. Harrell, Leslie Humphrey, Jack Jeffus, Oral Jones, Frank Kell, Joe Kell, J. J. Perkins, C. V. Snider, F. P. Timberlake, Texas Investment Company, a corporation duly incorporated, together with the City National Bank of Wichita Falls, E. A. Deaton, Liquidating Agent of the City National Bank of

Wichita Falls, come now and answer the cross-complaints of the Wichita Royalty Company and E. E. Scannell, its Trustee, and for such answer plead as follows:

I.

By way of affirmative plea in bar of said respective cross bills against the defendants, City National Bank of Wichita Falls, J. T. Harrell, Trustee, and E. A. Deaton, Liquidating Agent, and of W. H. Peckham, Administrator of the Estate of G. W. Peckham, Deceased, Hazel Peckham, William Peckham, George Peckham, and Robert Peckham, surviving wife and children of G. W. Peckham, deceased, and the Texas Investment Company, a corporation duly incorporated, as well as the cross-complaint against the City National Bank in Wichita Falls, J. T. Harrell, Trustee, Leslie Humphrey, L. H. Cullum, J. T. Harrell, Jack Jeffus, Oral Jones, Frank Kell,
289 Joe Kell, J. J. Perkins, C. W. Snider, and F. P. Timberlake, interpleaded defendants, as well as the cross-complaint against J. T. Harrell, W. H. Peckham, administrator of the estate of G. W. Peckham, deceased, Hazel D. Peckham, Robert Peckham, William Peckham, and George Peckham, surviving wife and children of G. W. Peckham, deceased, and the Texas Investment Company, a corporation, these defendants respectfully say that said cross-complaints show and appear on their face to be an action for debt against the respective defendants by virtue of the wrongful transfer of funds by G. W. Peckham while trustee of the Wichita Royalty Company from the account of the Wichita Royalty Company to the individual account of G. W. Peckham, and the wrongful expenditure of such funds. The liability against the City National Bank of Wichita Falls arises by an alleged wrongful participation and knowledge of such transfers. The respective cross bills affirmatively show that the primary liability is that of the estate of G. W. Peckham and that, as between the estate of G. W. Peck-

ham and the remaining interpleaded defendants, the relationship is that of principal and surety. Said pleadings further show affirmatively that the major portion of the items sued for were occasioned by the alleged sale of properties by G. W. Peckham while he was trustee of the Wichita Royalty Company from himself individually to himself as such trustee. The cross-complaints further show affirmatively that the Wichita Royalty Company has held, claimed, and received the proceeds from said respective royalties from the time of said transfers by Peckham to the Royalty Company up to this time, for a period in some instances of as long as fifteen years, and that it continued to hold said properties and receive the proceeds therefrom after the filing of this suit.

290 W. H. Peckham, soon after the death of G. W. Peckham, was appointed administrator of the estate of G. W. Peckham, deceased. He qualified as such in the probate Court of Wichita County, Texas, and has at all times been acting as administrator of the estate of G. W. Peckham, deceased. After the death of G. W. Peckham, deceased, and after the appointment of E. E. Scannell as substitute trustee in lieu of G. W. Peckham, deceased, said substitute trustee (who had signed most of the checks complained of as secretary and treasurer of said company) made, filed, and presented his affidavit on behalf of the Wichita Royalty Company of a claim against the estate of G. W. Peckham. Said claim was presented to the administrator of the estate of G. W. Peckham on or about the 16th day of December, A. D. 1930, and was for the principal sum of $19,828.67, a copy of which claim is attached to this answer, marked Exhibit "A," and made a part hereof. That said claim, though presented, was never allowed by the administrator of the estate of G. W. Peckham, deceased, and no other claim for any other such has ever been presented by the Wichita Royalty Company or its trustee to W. H. Peckham, administrator of the estate of G. W. Peckham, deceased.

It is required under the laws of the State of Texas that before any claim against a deceased person can be sued upon or reduced to judgment that such claim must first be presented to the administrator of such deceased person, and, if disallowed or if no action is taken thereon by said administrator, suit must thereupon be brought within ninety days after the rejection of such claim and not thereafter; that no suit was ever filed upon any rejected claim and no claim was ever approved in this matter against the estate of G. W. Peckham, and the liability, if any, of the other defendants being a secondary liability, the law would require first that the claim and indebtedness be reduced to judgment against the
291 primary obligor, and that, had an election been made by Scannell as trustee to rescind such sales as he now alleges to be fraudulent at the time he became trustee, or within a reasonable time thereafter, the effect of such election, if the election was justified, would be to place the properties so purchased in the ownership of the estate of G. W. Peckham and a claim against the estate of G. W. Peckham, established in accordance with the law, would have been collectible, but the cross-complainants failed to elect but continued to hold said properties, to receive and dissipate the proceeds therefrom in the prosecution of this action and otherwise until such properties have become depleted and worthless, or at least many of them have so become.

Wherefore, these interpleaded defendants say that the failure of E. E. Scannell to make an election at the time he qualified as substitute trustee, or within a reasonable time thereafter, and to file his claim and establish the same in a legal and proper manner against the estate of G. W. Peckham, deceased, has barred his rights to a recovery against any of the interpleaded defendants, including the plaintiff, City National Bank of Wichita Falls, and J. T. Harrell.

II.

By way of further affirmative plea, these defendants respectfully shows that the items sued upon are based upon transfers made by G. W. Peckham while trustee of the Wichita Royalty Company upon checks duly drawn upon the plaintiff bank beginning as far back as A. D. 1923 and continuing up to the time of the death of G. W. Peckham, deceased, in the fall of 1929. The suit is based upon an alleged deposit liability and said suit is barred as to all items sued for, for the reason that the said cross-
complainants are guilty of laches in making any
292 demand for such liability. This defense is applicable not only to the items originally sued for in the first cross-complaint filed in April, A. D. 1931, but is applicable to those additional items sued for in the cross-complaints filed herein on December 12, A. D. 1936, which latter cross-complaints include also the items sued for in the original cross-complaint filed in 1931.

In this connection these defendants respectfully show that upon all of the items and transactions made the basis of liability herein, by way of transfers of funds from the deposit account of the Wichita Royalty Company to the deposit account of G. W. Peckham individually, such transfers were made upon checks drawn and duly signed by E. E. Scannell or G. W. Peckham, both of whom were authorized to draw checks upon the account of the Wichita Royalty Company; that said checks were returned each month to G. W. Peckham or E. E. Scannell, who was acting as secretary and treasurer of said company, together with a statement of said bank showing the deposit balance of the Wichita Royalty Company and showing a debit against said deposit balance by reason of such checks, and said statements, together with the returned checks, affirmatively showed that the plaintiff bank recognized no deposit liability remaining after such checks had been cashed, and that after the death of G. W. Peckham E. E. Scannell made a full and thorough investi-

gation of the books and records of the plaintiff bank and ascertained that the said bank recognized no deposit liability by reason of the withdrawals aforesaid, and that the said E. E. Scannell as trustee had possession of such facts as amounted to a demand and refusal on the part of the bank to recognize or pay anything in addition to what such monthly statements showed was the deposit liability of the Wichita Royalty Company. Said bank repeatedly rendered to the said cross-com-
293 plainant an account which affirmatively showed that said bank claimed the funds now charged to be on deposit had been withdrawn from said account, and that such notice was given to the cross-complainant more than four years and more than two years prior to the filing of any suit against the interpleaded defendants, including the plaintiff bank herein.

That in April, A. D. 1931, the cross-complainant filed a cross bill and petition against the plaintiff bank, claiming a deposit liability for certain items set forth in said original cross-complaint, but which did not include any items prior to October 8, 1925, and said original cross-complaint alleged a demand for a deposit liability of approximately $80,000 and alleged a refusal of the bank to pay such sum, and prayed for judgment thereon.

Wherefore, the recovery upon all items prior to October 8, A. D. 1925, is barred and the said cross-complainants are guilty of laches and such delay as will forever bar them from recovery upon any of said items.

These interpleaded defendants, as well as the City National Bank of Wichita Falls and J. T. Harrell, further show that the properties involved are oil properties; that at all of the times from the date of the original purchase and sale to the Wichita Royalty Company to the present time they had and have a highly fluctuating and speculative value. An instance of such value is shown by the pleadings herein, with reference to the Wheeler and Gray County royalties. In the original cross-complaint filed

the Wichita Royalty Company elected to rescind the purchase of the Wheeler and Gray County royalties and to recover from the plaintiff bank the purchase price thereof in the amount of $10,000. That at said time the properties had no substantial value, or at least were not producing properties; that since said election oil has been discovered on said royalties and from the time
294 of the filing of the original cross bill and complaint by the Wichita Royalty Company to the time of the filing of the amended cross bill and complaint of the Wichita Royalty Company the said Wheeler and Gray County royalties have become valuable, worth much in excess of the sum of $10,000, and the cross-complainant has withdrawn its election and now seeks to hold the same, and has omitted said item of $10,000 from its alleged indebtedness. This is but an instance showing the fluctuating nature of said properties. It was the duty of the Wichita Royalty Company and its trustee to act promptly, to make its demand promptly, and, having failed to do so, said cross-complainant Wichita Royalty Company is barred from any recovery herein by reason of the equitable doctrine of laches, limitation, and stale demand, which defenses these interpleaded defendants, including the City National Bank of Wichita Falls and J. T. Harrell, specially plead in bar of the cross-complainants' right to recover herein.

III.

Answering separately the cross-complaint of the Wichita Royalty Company and E. E. Scannell, its trustee, against the City National Bank of Wichita Falls; J. T. Harrell, Trustee; E. A. Deaton, Liquidating Agent; W. H. Peckham, administrator of the estate of G. W. Peckham, deceased; Hazel Peckham, William Peckham, George Peckham, Robert Peckham, and the Texas Investment Company, a corporation, these defendants say:

In reply to the motion to remand, set forth in said cross bill, these defendants say that this suit involves the wind-

ing up of the affairs of a national bank and arises under the Constitution and laws of the United States, and that a motion to remand has already been duly overruled.

295 IV.

Answering paragraph number III of said cross-complaint, these defendants say that the Wichita Royalty Company is a trust estate operating under a declaration of trust, but that the trustee has unlimited power to deal with the properties of said trust and his dealings are not confined solely to oil and gas royalties and other oil and gas properties, neither does it require the title to all properties to be held in the name of the trustee as such, but that such declaration of trust and articles creating such association give to the trustee the widest discretion, free from the control of the shareholders, in making all manner and form and kind of investments.

V.

Answering paragraph number IV, these defendants admit the allegations in said paragraph.

VI.

Answering paragraph number V, these defendants admit that the City National Bank of Wichita Falls is a national banking association organized and created under the laws of the United States, but that it is now in liquidation. It admits that J. T. Harrell is its president and that he has been an executive officer of said bank at the times therein mentioned; that a portion of the time he was not president, however, but active vice-president.

VII.

Answering paragraph number VI, these defendants admit that E. A. Deaton is the Liquidating Agent of said plaintiff bank, pursuant to appointment and qualification

as required under the laws of the United States of America governing the liquidation of national banks.

VIII.

In reply to paragraph number VII, these defendants deny that J. T. Harrell was placed in possession of all of the assets of the plaintiff bank, but that he
296 was placed in possession of only such of said assets as were not sold outright and assigned, transferred, and delivered to the City National Bank in Wichita Falls, and that only as to such remaining assets is he trustee and that he is trustee under a pledge of such remaining assets for an indebtedness of approximately $189,000 owing by the City National Bank of Wichita Falls to the City National Bank in Wichita Falls.

IX.

Answering paragraph number VIII, these defendants admit that W. H. Peckham is administrator of the estate of G. W. Peckham, deceased, and that the other Peckhams named in said paragraph number VIII are the surviving heirs at law of G. W. Peckham, deceased, and that their respective residence is as alleged. They deny that the Texas Investment Company is a dissolved corporation, but they say that the Texas Investment Company is a corporation duly incorporated, in good standing, and is incorporated under the laws of the State of Texas.

X.

In reply to paragraph number IX, these defendants admit that all of the parties to this controversy, except Hazel D. Peckham, William Peckham, and George Peckham, are citizens of the State of Texas; that the last-named parties are citizens of the State of Colorado. They

deny that the rights of the parties with respect to the matters herein involved are determinable by an application of the laws of the State of Texas, but say that the matters herein involved are determinable by the general law and by the laws of the United States of America, in that the matters involved are the winding up of the affairs of a national bank and the construction of the statutes and laws of the United States.

297 XI.

Defendants admit paragraph number X of said cross-complaint.

XII.

In reply to paragraph number XI, these defendants deny the allegations therein contained and say that there is no deposit liability owing by the plaintiff bank to the Wichita Royalty Company. They further say that the allegations in said paragraph number XI are too general upon which to predicate any liability and that the same should therefore be stricken.

XIII.

In reply to paragraph number XII, these defendants deny the allegations in said paragraph and deny that they knew each and every fact pleaded or were charged by law with the knowledge thereof. They say that G. W. Peckham and E. E. Scannell both had authority to draw checks upon the account of the Wichita Royalty Company and under the law the plaintiff bank was charged with the duty of honoring such checks. That it did not know and had no right to assume that the trustee or the secretary and treasurer of said company, Scannell, was wrongfully withdrawing funds from the account of the Wichita Royalty Company.

XIV.

In reply to paragraph number XIII of said cross complaint, these defendants admit that the declaration of trust and articles of association was the general authority under which the trustee of the Wichita Royalty Company was acting, and that such articles and declaration of trust gave to the trustee the broadest powers and did not limit his powers solely to the purchase and sale of oil and gas royalties and other oil and gas properties, but gave him broad discretion to make any investment free from the control of the shareholders; that it did not require him to place the title to all properties in his name as trustee of the Wichita Royalty Company, or to
298 hold all funds as such trustee, and therefore these defendants deny the allegations in said paragraph number XIII.

XV.

In reply to paragraph number XIV of said cross bill, these defendants admit that G. W. Peckham during the time he was trustee was also engaged in private business and enterprise. These defendants say upon information and belief that said trustee did not use trust funds for non-trust purposes or for his personal and individual benefit, or seek to destroy the evidence of the trust title to property, and deny that he colluded with the bank's officers to accomplish a misappropriation of trust funds or to make payments to such parties upon his private debts, and deny that said bank or its officers had any knowledge of the payment by said trustee of any private debt out of trust funds. They deny that he traded and trafficked with himself as an individual and trustee and made profits personally from such dual dealings, or that they participated therein with any knowledge of the trustee's breach of trust. They deny in toto that any of the alleged peculations of G. W. Peckham were known to the bank or its officers, or that they were charged with such knowl-

edge, or that the bank or its officers ever received any trust funds upon the payment of any private indebtedness owing by G. W. Peckham. They deny that there was any participation on the part of the bank, its officers and agents, with G. W. Peckham in despoiling the trust or its funds. They say that at all times during the trusteeship of G. W. Peckham they believed him to be an honest and faithful fiduciary. That such was his record as a citizen and in his dealings with said bank, and that said bank and its officers had the right to assume and presume that the transfer of funds upon the authorized check of G. W. Peckham or E. E. Scannell, from the
299 account of the Wichita Royalty Company to the individual account of G. W. Peckham, was for a rightful purpose and they had no right to suspect the said G. W. Peckham of thieving; that the law imposes no such duty upon the officials, agents, or employees of a bank with reference to the accounts of its customers.

XVI.

Answering paragraph number XV, these defendants say that if said checks were all upon the voucher form it was intended that the voucher should be detached before the check was cashed, which was done, and that the vouchers were merely a memorandum for the convenience and benefit of the Wichita Royalty Company and its trustee, and was not notice to the bank of the purposes for which said checks were drawn and the bank would not therefore be bound by any notation or written memorandum contained in said vouchers; that said voucher contains a printed statement thereon, "detach here before depositing check," and contains a perforation between it and the check, clearly showing that it was not intended to be any notice to the bank of what the voucher contained.

XVII.

Answering paragraph number XVI of said cross bill, these defendants say that they are without knowledge as

to the checks mentioned in said paragraph, as to whether they were deposited in the personal account of the drawing trustee, but do say that many checks were drawn during the six and one-half years that G. W. Peckham was trustee upon the account of the Royalty Company and the funds were transferred to the individual account of G. W. Peckham, but that the bank believed and it had a right to assume that said transfers were regular and valid; that they did not know that said money
300 was being improperly diverted from the trust account to the personal account of the trustee to be used for the personal benefit of said trustee; that it assumed that said trustee would rightfully disburse the funds and it was not charged with any duty to act as a co-trustee or super-trustee in the handling of the Wichita Royalty Company account. It was guardian only of the deposit, not of the depositor. Its duty was to safely keep the money until withdrawn upon the proper order of one authorized to sign checks, and this it did.

## XVIII.

Answering paragraph XVII, these defendants admit that the list of checks shown in said paragraph XVII is a correct list of checks drawn upon the account of the Wichita Royalty Company; that most of said checks were signed by E. E. Scannell, who was the secretary and treasurer of the said Wichita Royalty Company, but who was authorized to sign checks and withdraw funds from the account of the Wichita Royalty Company. These defendants deny that said checks, or any of them, was an accomplished misappropriation of trust funds by the trustee. They say upon information and belief that said checks were rightfully drawn upon said account of the Wichita Royalty Company for the purchase of properties, made by G. W. Peckham for said Royalty Company or the payment of indebtedness due by said company. That each and every item mentioned and described

in said paragraph XVII was a proper expenditure of monies of the Wichita Royalty Company by the trustee; that said checks, and each of them, were debited to the deposit account of the Wichita Royalty Company; that they were returned each month to the Wichita Royalty Company, showing to have been paid and charged to the account of the Wichita Royalty Company, together with a statement showing the withdrawals and
301 deposits and the bank balance at the close of each month, after crediting such checks to the Wichita Royalty Company; that E. E. Scannell, who was then secretary and treasurer of the Wichita Royalty Company, received said checks; that the said Wichita Royalty Company has retained said checks and the bank statements showing that said checks were paid from the deposit account of the Wichita Royalty Company from the time the first one was drawn on October 8, 1925, up until the filing of this suit, which was filed for the first time in April, 1931, more than two years and more than four years after most of said checks had been signed, cashed, and returned to the cross-complainant; that said checks represented the purchase of oil properties in the main and that the said cross-complainants delayed more than two years to bring any action in connection with said checks, or the withdrawal of said funds, and that their claim by reason thereof is barred and they are precluded from recovery under the equitable doctrine of laches and stale demand, which these defendants plead in bar of such recovery. In this connection, these defendants deny any participation with the trustee in the transfer of such funds. They say that the bank and its officers believed that said funds were rightfully being withdrawn and were rightfully used for a proper and legitimate purpose, and the law creates no implication to the contrary.

XIX.

Answering paragraph XVIII of said cross bill, these defendants say that said paragraph affirmatively shows that

the sums represented by the sale of the two royalties therein described were never deposited to the credit of the Wichita Royalty Company. They say that the defendant bank herein and its officers had no knowledge of the nature of such deposits; that it accepted said deposits in the ordinary course and custom of banking,
302 without any knowledge of the trust character of such funds or any misappropriation or intended misappropriation thereof by G. W. Peckham, Trustee.

XX.

Answering paragraph XIX, these defendants deny that the bank received from G. W. Peckham upon payments of his personal indebtedness the sum of $57,764.21 from funds transferred from the Wichita Royalty Company's account. These defendants do admit that G. W. Peckham paid to the bank during this period of time $57,770.21; that said payments were made upon funds belonging to G. W. Peckham and that during this period of time G. W. Peckham deposited with the plaintiff bank $1,683,000, of which amount not more than 11% were deposits from a transfer of funds from the account of Wichita Royalty Company. The bank was not charged with the duty of inspecting the cross-entries to determine what Peckham did with the money. The presumption of honest dealing afforded the bank protection in handling fiduciary accounts. It was not its duty to supervise such accounts in respect to the honesty of the trustee. These defendants deny that said payments would not have been made except by reason of transfers of funds from the Royalty Company account to Peckham's individual account, or that Peckham diverted such funds for the purpose of making such payments or that the bank had any knowledge thereof.

XXI.

Answering paragraph XX, these defendants say that the perforations on said checks and the notation on the

back thereof did not require the bank to make an investigation as to the purpose for which the said checks were given, or to institute an inquiry as to whether or not the trustee was acting within the scope of his authority, or was about to effect a misappropriation of such funds.

303 In this connection they say that most of the checks were signed by E. E. Scannell; that he was the secretary and treasurer of the company, advertised as such, had charge of the office books and accounts, was an accountant experienced in the handling of books and records and keeping accounts; that he signed the checks, he wrote the vouchers, he kept the books, and the checks were returned to him showing that they had been debited to the Royalty Company's account; that the vouchers which originally accompanied the checks showed the purpose for which the funds were withdrawn; that Scannell made out the vouchers, kept a duplicate in his office of the same, and, even if the bank had any suspicion as to the integrity or honesty of G. W. Peckham, this method afforded it a double assurance that the funds were being properly handled; that Peckham and Scannell were the only executives of the Wichita Royalty Company; that it had no other officers in this country; that its stockholders were widely scattered, residents of other states, and this bank could not and it was not called upon to set up a jus tertii in respect to said deposits and transfers; that it never knew who the stockholders are or were and Scannell now refuses to disclose who they are and it had no way of checking up on or advising the stockholders, even if such was its duty, as to the intended misuse of such funds.

XXII.

Answering paragraph XXI, these defendants say that it was not the duty of the bank to examine the status of the personal account of G. W. Peckham at the time the deposits in question were made. These defendants say

that it is true that Peckham at times was indebted in large sums to the plaintiff bank; that he was a man of large affairs, handled substantial sums of money, his credit was good, and he was highly regarded in
304 this vicinity as a man of integrity and honor.

XXIII.

Answering paragraph XXII, these defendants admit that J. T. Harrell was one of the executive officers of the bank; that said bank had other officers and it was managed by a board of directors; that it had a discount committee composed of the active officers of said bank and generally two outside directors who passed upon all loans; that the loan to G. W. Peckham was passed upon and made in the usual and customary manner in which commercial banks extended loans and there was nothing unusual in the loaning of money by a bank to G. W. Peckham at said time; that he was highly regarded both in a financial way and for honor and integrity.

These defendants further allege that they are without knowledge as to what loans the cross-complainant refers to in said paragraph XXII, but says that the loans made to the Wichita Royalty Company, the renewal of which is the indebtedness herein sued upon, was deposited to the credit of the Wichita Royalty Company and withdrawn upon the proper signature of the trustee or officer authorized to sign checks and withdraw funds, and these defendants deny that said trust fund was diverted to the personal account of the trustee, so that he might or did pay to the loaning banker a personal debt, or so that the loaning banker might or did pay to the bank his private debt, or so that the bank might or did receive from a portion of such trust funds a payment upon the private debt of W. H. Peckham or upon the private debt of G. W. Peckham. These defendants deny the facts as pleaded in said paragraph XXII. They say, however,

that if such facts as pleaded are true that such would not effect any notice to the defendant bank of the wrongful use by Peckham of the funds in question. If
305 such a corrupt statement of facts existed, which these defendants deny in toto, they say that the bank would not be charged with knowledge by reason of such use of the funds.

XXIV.

In reply to paragraph XXIII of said cross bill, these defendants admit that G. W. Peckham and J. T. Harrell were good friends. They say that they were business associates only in respect to a joint ownership in certain city town lots known as the Marlborough Addition; that J. T. Harrell purchased an undivided one-fourth interest in said lots along with J. A. Kemp, now deceased, W. H. Peckham, and G. W. Peckham; that at the time of the purchase the properties had a prospective value for a town-lot subdivision; that neither Harrell nor Kemp participated in the management of said enterprise, but, having confidence in the integrity and business judgment of G. W. Peckham, trusted to him to handle the subdivision, improvement, and sale of said addition; that at no time did either Harrell or Kemp—until after the death of G. W. Peckham—have any actual knowledge that G. W. Peckham had sold and assigned to the Wichita Royalty Company the interest in said Marlborough Addition formerly belonging to G. W. Peckham and his brother, W. H. Peckham. They did know, however, that G. W. Peckham had acquired individually the interest of W. H. Peckham. They admit that G. W. Peckham was trustee. They say that J. T. Harrell was one of the chief active officers of the plaintiff bank. He would not probably have been called the chief active officer of said bank.

That, likewise, Harrell and Peckham and C. E. Basham were joint owners in a small farm near Wichita Falls known as the Curlee tract. These defendants deny that

they were the joint owners of a producing royalty known as the Stephens Royalty, in Wilbarger County,
306 Texas,—at least except for only a very short period of time. Harrell and Basham each owned an undivided one-fourth interest in a producing royalty in Wilbarger County, Texas. It was a valuable royalty and in the fall of 1925 they sold a one-fourth interest in said royalty to G. W. Peckham. This sale was made for a consideration of $30,000.00 paid by G. W. Peckham, who in turn sold the same to the United Royalties. A few months later Harrell and Basham sold their remaining interest in said royalty to the Wichita Royalty Company, so there was no joint ownership of said royalty, except between the date of the first sale to G. W. Peckham and the date of the last sale to the Wichita Royalty Company.

As to the indebtedness owing by the defendant Harrell to the plaintiff bank and its increase thereof and the amount of indebtedness owing by G. W. Peckham to the plaintiff bank, these defendants admit that J. T. Harrell was indebted to the City National Bank of Wichita Falls in approximately the sums mentioned and that G. W. Peckham was likewise indebted to said bank for money borrowed. They likewise admit that J. T. Harrell and G. W. Peckham, together with J. A. Kemp and W. H. Peckham, were indebted to the Highland Irrigation Company upon certain notes, representing the purchase price of the Marlborough enterprise. These transactions were nothing out of the ordinary. The Highland Irrigation Company was a corporation. J. A. Kemp was a respected and leading citizen of this city; J. T. Harrell was an officer of the plaintiff bank; W. H. Peckham and G. W. Peckham were both respected citizens, responsible at said time for their obligations.

J. T. Harrell was an officer of the bank with which G. W. Peckham did at least a part of his business, probably the major part. It is not likely he would be termed

the personal banker of G. W. Peckham, as he
307 was not a banker individually, but only in a representative capacity. It is speculative as to whether or not G. W. Peckham would have told Harrell any matter or thing in respect to his business. He did not tell Harrell that he had assigned the interest in the Marlborough Addition to the Wichita Royalty Company. If Peckham was thieving, as the cross-complainants allege, it is improbable that he would have told Harrell the matters alleged. As to whether or not it was a custom or practice of bankers to inquire into the intended purpose for which loans were made is speculative. It forms no part of a cause of action against the plaintiff bank and the interpleaded defendants.

XXV.

In reply to paragraph XXIV, these defendants say that said paragraph is argumentative and contains no allegations of fact, but these defendants admit that the Wichita Royalty Company purchased the Stephens Royalty from C. E. Basham and J. T. Harrell for an agreed consideration of $20,000, plus the interest Peckham owned in the Curlee land. They deny that the value of this interest was agreed upon as $2,407. In connection with the purchase of the Stephens Royalty, these defendants say that it was a valuable royalty; that a like interest had theretofore been sold to G. W. Peckham for a larger sum only a short time before; that said royalty had many large producing oil wells on it at the time of the sale; that the Wichita Royalty Company notified its shareholders of the purchase of same in the early part of 1926. Said company held it from 1926 until after the death of G. W. Peckham. E. E. Scannell assumed ownership of it, collected the proceeds from the oil produced from it, and sold it during his tenure of office; that the royalties,
including the sale price, produced in excess of
308 the purchase price and there was nothing fraudulent or wrong in the purchase of said Stephens Royalty.

XXVI.

Answering paragraph XXV, these defendants say that they are without accurate knowledge as to the amount of Peckham's deposits on January 4, 1926, but that the allegations in said paragraph XXV do not create any liability against the plaintiff bank or the defendant Harrell; that the sum of $5,000 mentioned by check No. 452 was in payment of a legitimate purchase of royalties; that neither Harrell nor the bank would have notice of any improper use of the funds of the Wichita Royalty Company because G. W. Peckham paid the Highland Irrigation Company by check on his personal account the sum of $812. These defendants deny that from January 6th to January 11th, 1926, that Peckham's personal account consisted wholly of trust funds. They on the contrary say that at all of said times he had sufficient funds in said account belonging to him personally with which to pay all checks drawn against the same, and that the check of $2,567.75 would create no notice to the bank or Harrell of any improper use of the Royalty Company's funds, in that said check was not received by Harrell or Basham or the bank. It was an independent transaction with third persons.

XXVII.

In reply to paragraph XXVI, these defendants deny that on January 12, 1926, G. W. Peckham's personal account consisted wholly of trust funds. They say that G. W. Peckham had advanced for the purchase of the Stephens Royalty personally the purchase price therefor or the amount that had at that time been paid thereon; that the transfers of two $5,000 checks mentioned in paragraph XXV were merely the repayment to Peckham for monies that he had theretofore personally advanced and that the sum of $454.50, represented by his
309 check to the Highland Irrigation Company, was his pro rata payment of a small tract of land purchased from the Highland Irrigation Company, each of

the other joint owners making their pro rata payment at said time. It was not in payment on any joint obligation owing by J. T. Harrell and G. W. Peckham to the Marlborough partnership venture.

XXVIII.

In answer to paragraph XXVII, these defendants say that they are without sufficient knowledge or information to correctly explain the reason why the liability ledger with the bank showed a debit of $15,300 to the Wichita Royalty Company and that the individual ledger did not show a credit until the 18th of January, unless the intervening day, to-wit, January 17th, was a banking holiday or Sunday, and they charge upon information and belief that the loan was made to the Wichita Royalty Company on January 16th and that the liability ledger and records of the bank reflected the loan at the time the note was executed, and that said transaction probably occurred after banking hours on January 16th. The next day being a holiday, or Sunday, the transaction was not referred to the bookkeeper having charge of the individual ledger accounts until January 18th.

XXIX.

In reply to paragraph XXVIII, these defendants say that the check of $2,201.32 was monies advanced by Peckham individually upon the purchase price of the Stephens Royalty, the title to which was acquired by the Wichita Royalty Company. There was no misapplication or wrongful use of the funds in said respect, for the reason that the Wichita Royalty Company was the owner of the property, acquired as a result of the advancement of said sum of $2,201.32, and that there was no sum paid on said amount from trust funds.

310 XXX.

In reply to paragraph XXIX, these defendants say that the sum of $15,769.07 transferred by check No. 461 was

part payment of the Stephens Royalty acquired by the Wichita Royalty Company from J. T. Harrell and C. E. Basham. These defendants are without knowledge as to the time when the records of the Wichita Royalty Company showed the purchase of this royalty, as Scannell, the present trustee, kept the records, but they deny that the personal balance at the close of business on January 18, 1926, of G. W. Peckham, of $18,765.87, consisted wholly of trust funds.

XXXI.

In reply to paragraph XXX, of said cross bill, these defendants say that the payment of the check of $10,-028 on January 25th to J. T. Harrell and C. E. Basham was an advancement or payment by G. W. Peckham on the one-fourth of one-eighth producing royalty sold by J. T. Harrell and C. E. Basham to the Wichita Royalty Company, and that each of the sellers received one-half thereof as alleged. These defendants say that they do not have accurate information as to the exact amount of Harrell's deposit balance at said time with said bank, or his personal liability to the bank for money borrowed, but say that the producing royalty sold by Harrell and Basham to the Royalty Company belonged to them individually and not the bank; that they had the right to the profits received therefrom and that the payment by Harrell to the bank on his personal debt was from his own funds and not from the Wichita Royalty Company's funds, and there is nothing in the transaction that charges the bank with any knowledge or notice that Peckham was misusing funds of the trust, or that Harrell was participating in such misuse, even if the inferences from the allegations that Harrell and Peckham collaborated, conspired, and colluded together to so use the trust
311 funds that Peckham could pay his personal debt to Harrell and that Harrell could pay his personal debt to the bank, such transactions would not charge the bank with Harrell's knowledge, and, while these de-

fendants deny that such happened, they say that upon the pleadings and allegations of the cross bill of the cross-complainants herein in respect to said paragraph no liability is shown against said bank.

XXXII.

In reply to paragraph XXXI, of said cross bill, these defendants deny that the consideration for the one-fourth of the one-eighth royalty known as the Stephens Royalty, sold and conveyed by J. T. Harrell and C. E. Basham to the Wichita Royalty Company, was $20,000, plus Peckham's personal interest in the Curlee land of $2,407, but say that the true consideration paid to J. T. Harrell and C. E. Basham was the cash sum of $22,201.32, plus the interest of G. W. Peckham in the Curlee land, which interest was of the reasonable, fair value of $3,567.75, making a total of $25,769.07, which was the exact amount that the Royalty Company advanced and paid.

That the allegations as to the former testimony of J. T. Harrell should be stricken, as they are not relevant or form any basis of a statement of fact, and is an improper pleading in an equity case.

XXXIII.

Answering paragraph XXXII, these defendants deny that the effect of the transactions is as alleged in said paragraph in respect to the Stephens Royalty transaction. These defendants say that at the time and prior to the transactio s alleged J. T. Harrell and C. E. Basham were the owners each of an undivided one-fourth interest in an undivided one-eighth of a producing royalty in Wilbarger County, Texas, designated herein
312 as the Stephens Royalty. That they had theretofore owned an additional one-fourth each in said one-eighth royalty and had a few weeks prior there-

to sold to G. W. Peckham individually, or for some customer which Peckham represented, said one-fourth royalty for a cash consideration of $30,000, which royalty was reasonably worth in excess of such sum, and that a few weeks thereafter and prior to February 4, 1926, G. W. Peckham contracted to purchase for the Wichita Royalty Company the remaining one-fourth interest in said royalty owned by J. T. Harrell and C. E. Basham. The contract price paid to J. T. Harrell and C. E. Basham was as hereinabove alleged the sum of $22,201.32, plus the transfer to Harrell and Basham of an interest in real estate reasonably worth on the market $3,567.75; that the Wichita Royalty Company paid from its funds said sum of $25,769.07 for said royalty, which was less than the fair market value of said royalty at said time and less than Peckham had individually paid for a like interest in the royalty which he individually purchased only a few weeks prior to that time. That said royalty was a very valuable royalty. There were several producing oil wells on it, producing oil in large quantities. That the Wichita Royalty Company soon after it acquired the royalty notified all of its stockholders by letter of the acquirement of this valuable royalty. Scannell sent out the letters. That the Wichita Royalty Company held said royalty from February 4, A. D. 1926, during all the time of Peckham's trusteeship and up until the time he died, and when Scannell succeeded him he continued to hold said royalty for the use and benefit of the Wichita Royalty Company and sold it during his tenure of office, and received for the Wichita Royalty Company the proceeds from the sale thereof; that the proceeds from the oil produced from said royalty since the Wichita
313 Royalty Company acquired it, together with the sales price, far exceeded the purchase price paid by the Wichita Royalty Company, and that the said Wichita Royalty Company is in no position to complain of this transaction and no liability results against the bank, Harrell, or the estate of Peckham unless it be shown that Peckham received a private gain from the

transaction in dealing with his trust, and then only he and his estate would be liable.

Wherefore, the defendants say that the Wichita Royalty Company is estopped, by retaining the royalty, receiving the proceeds therefrom, selling the same, and using the monies received therefrom, from claiming any liability against the bank or Harrell by reason of the purchase of the Stephens Royalty.

XXXIV.

These defendants, in reply to paragraph XXXIII of said cross bill, say that the check No. 465 was for salary which was owing to G. W. Peckham from the Wichita Royalty Company. Peckham, under the declaration of trust and articles of association, was entitled to a reasonable salary, which sum of $400 was on account of such salary and was reasonable. That the check of $5,100, payable to J. T. Harrell and C. E. Basham, was a payment upon the original purchase of the Stephens Royalty, namely, upon a note given by Peckham for a deferred payment of $550 on February 13th of Peckham's personal indebtedness to the bank was made entirely from funds not transferred from the Wichita Royalty account or chargeable as trust funds; that Peckham on said date had in excess of $20,000 of unquestioned personal funds in said bank on said date.

XXXV.

In reply to paragraph XXXIV, these defendants say
that the check of $400 was merely a salary check
314 owing by the Wichita Royalty Company to
G. W. Peckham. It was not trust funds, but it was Peckham's personal funds. That the $21,000 check drawn by Peckham had nothing to do with the affairs of the Wichita Royalty Company. It was the expendi-

ture by Peckham of his individual funds for individual purposes, which he had the right to do. The statement in said paragraph XXXIV that J. T. Harrell paid the bank upon his personal indebtedness $10,000 and that the cross-complainant is unable to say what, if any, connection was had between these transactions is merely a prejudicial inference, seeking to cast a reflection upon the defendant Harrell without any supporting facts, and should be stricken as improper pleading, but in this connection these defendants say that the $10,000 payment by Harrell had no connection whatever with the purchase by Peckham for himself of properties and the payment of $21,000 therefor, and that Harrell was in nowise interested in said purchase and neither was the Royalty Company.

XXXVI.

In reply to paragraph XXXV, these defendants say that they have not sufficient knowledge upon which to admit or deny the allegations in said paragraph XXXV, except they do say that Peckham owed the bank on said date a substantial sum of money; that generally Peckham's balance to his personal account was substantial and worth while. These defendants also say that Harrell owed the bank certain sums of money and that Harrell, Peckham, and W. H. Peckham, together with J. A. Kemp, owed obligations for the purchase of the real estate known as the Marlborough Addition; that there was no fraud connected in any of the transactions; that the various loans made were the usual and customary course of banking business and no inferences should be drawn from the fact that various parties here involved were indebted for money borrowed.

315 XXXVII.

In reply to paragraph XXXVI, these defendants deny that W. H. Peckham's personal balance on March 6, 1926,

was $225.20 and consisted wholly of transferred funds, or that it was increased $17,623.70 upon trust check No. 478 drawn on and payable to the bank's order. They say that they are without sufficient information to accurately state the various accounts on said date, but that the same can be ascertained by an accountant or auditor. They allege that the payment of $5,060 to C. E. Basham and J. T. Harrell was in payment of an installment due upon the purchase of the Stephens Royalty for the Wichita Royalty Company. They say that they were at the time not charged with inspecting the source from which W. H. Peckham received the sum of $11,811.85, or from what source G. W. Peckham received the deposit of $17,623.70. They had the right to presume that said transactions were valid and proper and fairly made. They do allege, however, that on or about said date G. W. Peckham purchased for the Wichita Royalty Company a one-half interest in the Marlborough Addition; that he first acquired from W. H. Peckham a deed to a one-fourth interest in said Marlborough Addition and then conveyed to the Wichita Royalty Company an undivided one-half interest in the Marlborough Addition, delivering the deed to E. E. Scannell and instructing E. E. Scannell to cause the records of the Wichita Royalty Company to reflect the true transaction. The bank or Harrell had no notice or knowledge of this transaction and the deed was not recorded, but was delivered, as Scannell well knew. That at said time the Marlborough Addition was adjacent to a section of the city of Wichita Falls which was being highly developed as an exclusive residential section. It had a fair value and its
316 value was subject to fluctuations, dependent upon the growth and development of the city of Wichita Falls; that Scannell knew all about this transaction; that he was the only officer of the Royalty Company at Wichita Falls or in this vicinity, except the trustee, G. W. Peckham; that the Wichita Royalty Company continued to hold this property during the period from 1926 up until the time of the filing of this lawsuit

in 1930; that it maintained and occupied a position that if the city grew and the property became valuable, that is, worth more than the purchase price, it could elect to hold the same and did elect to hold the same. It became Scannell's duty when he was appointed substitute trustee in 1929, he knowing all the facts at said time, to immediately elect to rescind the transaction if there was anything improper about it, but he refused to do so. He claimed the property as the property of the Wichita Royalty Company after he qualified as trustee and informed the other joint owners, J. T. Harrell and J. A. Kemp, that G. W. Peckham during his lifetime had sold the interest formerly belonging to G. W. Peckham and W. H. Peckham to the Wichita Royalty Company. He asked for a transfer of one-half of the capital stock of a corporation which had been organized to take over said properties and one-half of the capital stock of said corporation was issued to the Wichita Royalty Company. He signed, as indorser, notes of the Texas Investment Company, which was the successor in legal title to the enterprise known as the Marlborough Addition, such signature being made along with that of J. A. Kemp and J. T. Harrell; that prior to the death of G. W. Peckham he had indorsed the notes of the Texas Investment Company. After the death of Peckham and when Scannell informed the other joint owners that the Wichita Royalty Company owned one-half of this property, and was the successor in title of G. W. Peckham and W. H. Peck-
317 ham, the bank released the indorsement of G. W. Peckham and accepted the indorsement of E. E. Scannell, as trustee of the Wichita Royalty Company. The notes were renewed from time to time, payments were made thereon, and Scannell recognized and claimed said properties as belonging to the Wichita Royalty Company up until shortly before the filing of this suit, and after the world-wide depression had apparently eliminated any values in and to said property. Scannell's actions in failing to repudiate said transaction promptly, his actions in claiming the property as the Wichita Royal-

ty Company's property, in causing the stock to issue in the name of the Wichita Royalty Company, in indorsing notes of the Texas Investment Company, a corporation, which had acquired title to said properties, and in causing the same to be renewed, and in participating in the handling and management of said properties was an election to claim said properties for the Wichita Royalty Company, which election was irrevocable, and the said cross-complainant cannot therefore in good conscience or in equity cast a loss upon a commercial bank innocent and without knowledge of any wrongdoing in the transaction.

XXXVIII.

In reply to paragraph XXXVII, these defendants deny the facts stated in said paragraph. They say that G. W. Peckham was the only person with authority to act for the Royalty Company; that the declaration of trust vested in him complete power; that there was no limitation upon his power in respect to the purchase of this property and that the trust received such benefits as would accrue from the purchase of this town lot subdivision had the enterprise proved successful, and these defendants deny that the bank had any knowledge or notice of any intended misapplication of funds by G. W. Peckham in the transfer of the deposits from the Royalty Company account to his individual account, and that the
318 law did not imply notice from such transactions and deny that the bank is liable for any misappropriation in said respect.

XXXIX.

In reply to paragraph XXXVIII, these defendants deny that any misappropriations of funds of the Wichita Royalty Company were accomplished through the facilities of the bank or the active participation of its officers and agents in respect to the transfer of said funds from

the account of the Wichita Royalty Company to the individual account of G. W. Peckham. In respect to the transfer of such funds, these defendants say that the bank is not charged with notice resulting from such transfer of any intended misapplication of funds by the Trustee; that, while some of the checks were made payable to the order of the bank, they were in effect bearer checks and were presented by Peckham to said bank with instructions to transfer the same to his individual account. They were not intended for the bank or for the Royalty Company. The transaction was usual and customary. A customer desiring to withdraw funds frequently makes the check payable to the bank. That this was merely a custom of those having charge of the affairs of the Wichita Royalty Company, including Scannell. Generally, checks were payable to the bank for other expenses, such as office expenses, salaries, incidental expenses of many kinds. The bank had no interest in said checks so presented and payable to itself and said fact was not a circumstance charging the bank with notice of any intended diversion or misuse of the funds by G. W. Peckham. These defendants deny that the funds were diverted for the purpose of paying the trustee's personal debt or to paying his personal debt to officers of the bank, to the bank itself, or to pay indebtedness due the bank by third parties, or to pay the Marlborough debts.

It says that during this period of time the Marl-
319 borough Addition had an account with the bank, a deposit and liability account. W. H. Peckham had a deposit and liability account; G. W. Peckham had a deposit and liability account; J. T. Harrell had a deposit and liability account. That the transfer of funds upon checks was made generally by a teller, either the receiving or paying tellers of the bank. These tellers were not required to institute an inquiry and check the various cross entries of various customers who might finally receive a part of the proceeds of such checks, in order to determine whether one,—a trustee—was unfaithful to his fiduciary. The bank was required to pay

funds upon the authorized check of the depositor and this is all it did.

XL.

In reply to paragraph XXXIX, these defendants say that they would not be in any way prejudiced or bound by what the books of the trust reflected; that no official of the bank, or agent or representative, knew anything about the books of the trust or had access to the same. The books of the trust were kept by E. E. Scannell, the present trustee. The bank had the right to assume that he would cause the books to reflect the truth.

Wherefore, the defendants say that while they do not admit the facts pleaded in paragraph XXXIX they say that, if such facts were true, no liability would be created by reason thereof, in that the bank was not charged with notice of the book entries on the Wichita Royalty Company's books.

XLI.

In reply to paragraph XL, these defendants say that they are without sufficient knowledge to admit or deny the manner and way in which Peckham purchased royalties. Therefore, they deny the statements contained in paragraph XL, except they say that Peckham
320 did extensively deal in oil and gas properties in his own right and as an individual, which he had a right to do; that E. E. Scannell, the present trustee, was thoroughly familiar with the manner and way in which Peckham conducted said business and at no time ever raised any complaint thereto to the plaintiff bank, or its officers, until after Peckham had died and then only after the bank had called upon Scannell to pay the balance of the obligation owing to it by the Wichita Royalty Company.

Further replying to paragraph XL, these defendants say that the allegations are too general upon which to predicate any basis of liability; that said paragraph contains only conclusions and no specific instances of transactions wherein the properties were bought in the name of the trustee and later sold by the trustee to the Royalty Company, after they had become condemned.

Wherefore, this paragraph should be stricken.

XLII.

In reply to paragraph XLI, these defendants say that the allegations therein are too general upon which to form any denial or admission; that said paragraph should therefore be stricken; that the cross-complainants should be required to identify the transactions mentioned.

Wherefore, not having knowledge or information of the matters alleged in said paragraph, these defendants deny the same.

XLIII.

In reply to paragraph XLII, these defendants say that G. W. Peckham was not required to secure the authority of the certificate holders in the conduct of the business. In fact, the certificate holders had no power or right to direct his conduct; that E. E. Scannell, who, at the time of all the transactions complained of, was the secretary and treasurer and a certificate holder, knew
321 all the facts relating to the handling and management of the affairs of the Wichita Royalty Company by G. W. Peckham, Trustee, but in this connection these defendants say that since Scannell has succeeded Peckham as trustee he has elected to hold all of these properties. It was his duty to make an election at the time he qualified as trustee, being possessed with knowl-

edge of all the facts at said time, and after qualifying as trustee he elected to hold and assert unqualified title to said properties; that if any facts existed rendering the acquirement of the properties from Peckham individually to Peckham as trustee of the Wichita Royalty Company were such as entitled Scannell to repudiate such title, the title would thereupon revert to the estate of G. W. Peckham and said estate would then be possessed of such assets, and, if a money liability was created against the bank in respect to the purchase of said properties, in equity the bank would be entitled to apply the value of said properties to its indebtedness; that no claim was made by Scannell against the estate of G. W. Peckham or the administrator by virtue of those transactions. He (Scannell) elected to hold said properties, to use the proceeds therefrom in respect to the administration of the same, the payment of his salary, the payment of attorney's fees, the prosecution of this litigation, and, after the properties were depleted, to assert an election to repudiate the transactions. Equity and good conscience will not permit a trustee to assume this attitude. The properties in question were fluctuating in value, oil properties, worth much maybe one day and little another. Therefore, he cannot assume an equivocal attitude, giving him the right to take advantage of a future condition at a resulting loss to one who was not responsible for the conduct of the trustee.

322 Wherefore, said cross-complainant is estopped in good conscience to claim a liability against these defendants by virtue of any transactions whereby Peckham, as trustee, may have purchased from himself as an individual.

XLIV.

In reply to paragraph XLIII, these defendants deny that the properties described in subdivisions (a) and (b), of said paragraph XLIII, were purchased by Peck-

ham, as trustee, from himself individually; that the tract of land described in Subdivision (a) was purchased from A. J. Mathis and wife, who conveyed the same direct to the Wichita Royalty Company. Peckham advanced the amount of the purchase price personally and caused a transfer of a like amount from the Royalty Company account to his individual account, and thus reimbursed himself for such sum.

In respect to the properties described in subdivision (b), of said paragraph, the purchase of said properties was a joint purchase by G. W. Peckham for and on behalf of the Wichita Royalty Company, by W. T. Knight, Harry Hines, W. L. Robertson, and J. T. Harrell. Title to the same was taken in the name of W. T. Knight for convenience. The records and books of the Royalty Company immediately reflected the ownership of said property at the time the purchase was made and, after the death of G. W. Peckham, E. E. Scannell filed suit to establish the interest of the Royalty Company therein and elected to hold the same, and it was not until after the property had declined in value that he sought to throw off the burden of said purchase on some one else.

In respect to subdivision (c), of the property known as the Marlborough Addition, these defendants say that E. E. Scannell has elected to hold said property after he became trustee and with full knowledge of all the facts, and these defendants replead their answer to
paragraph .... in reply to the attempted election
323 to rescind the purchase of the Marlborough Addition, and say that said E. E. Scannell, as trustee, is estopped to claim a rescission of the purchase of the Marlborough Addition because of the facts alleged in paragraph .... of this answer.

These defendants say that they are without sufficient knowledge or information upon which to predicate any answer to the circumstances surrounding the purchase

of the properties described as (d) and (e), and therefore deny the allegations in respect to said paragraph XLIII concerning said properties.

In respect to the properties described in subdivision (f) of said paragraph, these defendants say that said property was purchased by G. W. Peckham for the benefit and use of the Wichita Royalty Company. The title originally was taken in the name of G. W. Peckham, who advanced $160 for the purchase price of same. That the books and records of the Wichita Royalty Company immediately reflected said purchase and the properties were conveyed to the Wichita Royalty Company for the sum of $160, the amount advanced by G. W. Peckham for the purchase price.

These defendants say that it is true that some of the royalties purchased by G. W. Peckham never proved productive, but others did; that the substitute trustee, Scannell, cannot elect to repudiate the purchase of those royalties which proved non-productive and hold on to the ones which proved valuable, and these defendants deny that said trustee has any right to an election at this time to rescind the purchase of royalties which have either been depleted or which were never productive of oil.

XLV.

In reply to paragraph XLIV, these defendants admit that G. W. Peckham died about November, 1929; that E. E. Scannell was appointed substitute trustee;
324 that he had theretofore been the bookkeeper, in charge of all the books and records and looked after the office affairs of the Wichita Royalty Company, and was the secretary and treasurer of said company. As to whether he was the owner of stock in the trust during said period of time, these defendants are without sufficient information upon which to predicate an ad-

mission or denial, but in this connection say that said substitute trustee has refused to permit these defendants access to the stock books of the Wichita Royalty Company in order to ascertain these facts. They admit that W. H. Peckham became, by appointment of a Court having jurisdiction, the administrator of the estate of G. W. Peckham and admit that after the death of G. W. Peckham a controversy arose as to whether or not certain checks should have been credited upon the note of the Wichita Royalty Company due said bank. The books and records of the bank were inspected by Scannell. He was fully informed as to the deposit balance of the Wichita Royalty Company and the amount of indebtedness that it owed soon after he was appointed substitute trustee, and it was thereupon developed that after the death of G. W. Peckham that there could be no accurate accounting as to the application of certain checks aggregating approximately $1,900, and the receipt by the Royalty Company of the sales price of two royalties aggregating $11,400, and an effort was made to adjust said difference and controversy for a short period of time; that after the said Scannell inspected the books of the plaintiff bank and being convinced that there was no application made by the bank upon the notes payable account of the Wichita Royalty Company of said checks, and that the bank had not received the benefit of any of the funds received from the sale of the two royalties, he conformed his books as to the liability of the Wichita Royalty Company to correspond with those of the bank's.

325 He recognized the liability of the Wichita Royalty Company upon its note due said bank and made a payment thereon, and recognized the liability of the Wichita Royalty Company upon its indorsement of the note of the Texas Investment Company, successor in title to the Marlborough Addition, and made a payment thereon, and filed a claim against the estate of G. W. Peckham for the sum of $19,926.67, which claim was not allowed, but no action was ever taken by him on said claim. There was no effort to conceal any of the trans-

actions as far as the bank, or its officers, were concerned. It was merely a matter of business judgment, endeavoring to secure the widow of G. W. Peckham to pay the claimed liability of $19,826.67, and this sum was all that was claimed by E. E. Scannell to be due the Wichita Royalty Company and he knew all of the facts at said time. He had signed substantially all of the checks now made the basis of this claim against the bank. He had received as secretary and treasurer and bookkeeper the returned bank statements showing the debits of said checks; he had written up the vouchers; he had received the deed from Peckham to the Marlborough Addition; he had entered the purchase upon the books of the company; he had paid from the Royalty Company's accounts debts due for the purchase price of the Marlborough Addition; he had consulted and advised with an attorney other than the one who is bringing this lawsuit, respecting his rights, and he was therefore fully informed as to the facts and the law would therefore charge him with knowledge of the legal effect of such facts, and in this connection these defendants allege that it was only a short period of time, not over sixty days, that the effort to settle this discrepancy was made, not by the bank but between Scannell and the widow of George Peckham.

326 XLVI.

In reply to paragraph XLV, these defendants say that the said Scannell knew all of the facts relating to the alleged defalcations at the time he became substitute trustee. If he did not tell his attorney such facts, it was his duty to do so and he was charged with the legal effect of such facts. These defendants admit that the claim against the estate of G. W. Peckham was prepared, presented, and filed to the administrator, but was not allowed, but these defendants deny that the trustee actively joined in a continuation of any concealment of any fraud of the former trustee with the officials of the

bank. Scannell knew all the facts and the law charged him with knowledge of his legal rights as trustee of the Wichita Royalty Company, and in this connection the defendants allege that he claimed the Marlborough properties for at that time the properties were valuable, worth more than the debts and the purchase price.

These defendants deny that Scannell was without counsel or legal advice. They admit that after the death of G. W. Peckham Scannell voluntarily and for the first time informed J. T. Harrell and J. A. Kemp of the ownership of the Wichita Royalty Company in the Marlborough Addition, which had then become incorporated under the name of the Texas Investment Company; that it was at Scannell's request and demand that one-half of the capital stock was issued to the Wichita Royalty Company, and he voluntarily indorsed the Wichita Royalty Company's name on the note of the Texas Investment Company and renewed it from time to time; that at said times he knew all of the rights, or knew the facts relating thereto, and that there was no effort to conceal these facts from the stockholders of the Wichita Royalty Company.

XLVII.

In reply to paragraph XLVI, these defendants say that Scannell voluntarily renewed the notes of the Wichita Royalty Company due to the plaintiff
327 bank and voluntarily indorsed and renewed the notes of the Texas Investment Company to the plaintiff bank, and demanded and received one-half of the stock in the corporation which took over the assets of the Marlborough Addition; that he was elected to and assumed the duty as president of the Texas Investment Company; that there was no effort to tie him up in any way; that he acted voluntarily and it was only when he was called upon as trustee of the Wichita Royalty Company to pay its obligations that he made any complaint about any of the transactions.

XLVIII.

In reply to paragraph XLVII, these defendants admit that the bank sued the Wichita Royalty Company and asked for the appointment of a receiver. They deny that a District Judge was persuaded to improvidently appoint a receiver, but they say that such action is a proper action for the appointment of a receiver.

XLIX.

These defendants say that they are without sufficient information and knowledge upon which to predicate a definite answer to the allegations in paragraph XLVIII. They do not know what happened between the substitute trustee and such attorney, but that these defendants were not charged and no liability could be predicated against them by reason of any transactions between said attorney and client. They do say that Scannell at all times knew all of the facts; that he consulted and advised with attorneys immediately upon his appointment as trustee of the Wichita Royalty Company in November,
328 1929, and that no suit was ever filed until after two years from the date of the transactions herein complained of, and that Scannell having knowledge of all the transactions and being in law charged with knowledge of the same his knowledge would be imputable to all of the shareholders, and limitation and laches would bar and deny any recovery in favor of the said Scannell as trustee of the Wichita Royalty Company against the plaintiff and the interpleaded defendants herein, and these defendants plead the laches and delay and limitation on the part of the Wichita Royalty Company and its trustee in bar of any right to recover in this proceeding.

L.

In reply to paragraph XLIX, these defendants deny that any trust funds were wrongfully transferred from

the deposit account of the Wichita Royalty Company to the individual account of G. W. Peckham through the facilities and active participation on the part of the bank or its officers, or in fraud of the rights of the shareholders or of the Wichita Royalty Company. They again say that current statements were made and delivered from the beginning of Peckham's tenure of office as trustee up until his death, each month, of all checks drawn upon the Wichita Royalty Company account, together with statements from said bank showing the deposit balance at the end of each month and showing the debit of said checks to said deposit account; that said checks were drawn, executed, and signed by authorized agents and officers of the Wichita Royalty Company and the said Scannell knew at the time he became substitute trustee all of these facts and knew that the plaintiff bank repudiated any claimed deposit liability to the Wichita Royalty Company, and knew that said bank would refuse to pay any check on said account except for such sums as were actually shown from said statements
329 to be on deposit; that such acts upon the part of the bank amounted to a refusal to recognize or pay such deposit liability; that accounts were furnished by the bank showing that no such deposit liability was recognized.

Wherefore, any deposit liability as claimed is barred and the cross-complainant is guilty of laches and delay in respect to prosecuting any action therefor, which the plaintiff and these defendants plead in bar of a recovery on any alleged deposit liability. They deny, however, that any such deposit liability exists or that any concealment of any of the transactions was made as alleged, or that the bank was guilty of any participation or wrong with G. W. Peckham while he was trustee.

LI.

In reply to paragraph L, of said cross bill, these defendants say that they are without information or knowl-

edge to say where the stockholders of the Wichita Royalty Company live, except the substitute trustee. They do say that the stockholders knew of the place of business where this trust was conducted; that they could have informed themselves as to all the facts pleaded herein; that the books were open to them for inspection at all times and that nothing was concealed from the stockholders by the bank or its officers, agents, and employees. They say that the facts were not self-concealing; that the books, vouchers, and records of the Wichita Royalty Company fully disclose all of the facts pleaded herein and that the stockholders could have ascertained such facts had they desired and acted with reasonable diligence; that the bank did not owe a higher duty in respect to such matters than the stockholders themselves. They had placed G. W. Peckham in charge of the assets and he was their trustee, not the banks. The bank had no right and owed no duty to supervise his conduct.

330 Current statements were mailed by Scannell to the stockholders showing the progress of the affairs of the Wichita Royalty Company. He notified all stockholders of the death of G. W. Peckham and of his appointment as substitute trustee, and it was the duty of the stockholders to look after their affairs and they are guilty of negligence and delay in bringing a suit now against a bank for any defalcation of the trustee, and after the trustee is dead and unable to disclose the true facts relating to the various transactions.

These defendants deny that the bank ever actively or knowingly aided in making any transfer of funds from the Royalty Company account to the individual account of Peckham, or knew that Peckham was commingling trust funds with his own, and deny that they actively participated or assisted him in so doing. They deny that they knew that Peckham was using trust funds for personal accounts or that he was using trust funds to pay personal debts, or that his personal credit rating would be increased by reason of the various transfers made, or

that it aided in making any transfers or accepted any payment of trust funds in payment of the personal debt of Peckham in any wrongful transfer of trust funds or that it ever received any trust funds in payment of any obligation Peckham owed to the bank, or that it was charged with any such knowledge, but that it at all times believed that Peckham was honest and fairly transacting the business of the Wichita Royalty Company as trustee; that Peckham was a man of good reputation in this section; that he was regarded well by all who knew him for honesty and integrity; that he was appointed as trustee by a District Court of this county. He had various dealings with many business men in this section and his
331 reputation for business integrity, honesty, and fair dealing was good and the bank never suspicioned that Peckham was acting fraudulently or in violation of any trust or duty he owed the Wichita Royalty Company. In all of the transactions the bank and its officers acted in good faith and the said bank never received any benefits from any of the transfers of such funds. Peckham died owing the bank approximately $25,000, more than he owed during the continuation of the trust under his management.

Wherefore, these defendants say that they deny the allegations contained in said paragraph L.

LII.

Answering paragraph LI, these defendants deny that G. W. Peckham from the beginning of his trusteeship was derelict in the discharge of his duties or that he forfeited any right to compensation or repudiated the trust, was guilty of gross negligence or claims the property, or misappropriated trust funds in such manner as would render this bank liable for any act of defalcation on his part. As to whether or not he was guilty of such conduct, as alleged, as would warrant his removal or would entitle him to no compensation, would not render any

liability against the bank for the funds he drew as salary. The bank had the right to assume that he was entitled to his salary. It had no knowledge of any facts which would render it liable to repay to the shareholders of the Wichita Royalty Company the salary paid to G. W. Peckham during his tenure of office, and these defendants deny the allegations in paragraph LI of said bill of complaint wherein the cross-complainants seek to recover against these defendants for salaries paid to G. W. Peckham. In this connection, these defendants say that the shareholders knew, or by the use of ordinary
332 care would have known, that Peckham was handling said estate in the manner and way in which he did handle it, and that he was currently drawing salaries for his services, and the delay of more than six years in bringing any action to recover said salaries bars such recovery under the equitable doctrine of laches and stale demand, and said claim for salaries is barred by limitation, which these defendants plead in bar of all the facts alleged in said paragraph, as well as in bar of the other allegations made the basis for a recovery herein against these defendants.

LIII.

In reply to paragraph LII, these defendants deny that they ever knew that G. W. Peckham was dishonest or unfaithful to his trust and deny that Peckham ever paid his personal debts to the bank with trust funds, as alleged, or that he was transferring funds from the account of the Wichita Royalty Company for the purpose of using such funds for his own personal benefit, and deny that they knew that he was acting in any dual capacity, as alleged. They deny that the bank or its officers permitted Peckham to commingle trust funds with his personal account, or participated in any manner in such transfer or disbursement. They deny that they are liable to the said Wichita Royalty Company in the amount of $200,000 or for any other such sum. They further say

that the whole claim is barred by the statute of limitation of two and four years; that the cross-complainants have been guilty of laches in prosecuting any suit for recovery herein. They further say that a cross-action was first filed in this case in April, 1931, at which time a recovery was prayed for only the sum of $85,000 upon a deposit liability. In said cross-action it was alleged that demand had been made upon the bank for the deposit
333 liability of the Wichita Royalty Company and such demand was refused, and now, five years later, these cross-complainants make another demand for a deposit liability of an additional sum of $115,000 and say this is the first demand. All of the facts and circumstances hereinbefore pleaded show that the bank at the time it rendered its current statements to G. W. Peckham, as trustee, showing the deposit liability of the bank to the Wichita Royalty Company and at the time that E. E. Scannel' was appointed as substitute trustee in lieu of G. W. Peckham, deceased, and when he examined the books of the bank and at the time of the filing of the first cross-petition the bank repudiated any deposit liability to the Wichita Royalty Company and its trustee. The said Wichita Royalty Company at all times knew that the bank would not pay any alleged deposit liability other than as shown by the current statements which it furnished. That such facts were tantamount to a demand and refusal and therefore, this suit having been brought more than seven years after the death of G. W. Peckham, claims are barred and the cross-complainants are estopped to recover upon any such deposit liability on the equitable grounds of laches, which is here pleaded.

LIV.

In reply to paragraph LIII, these defendants do not admit or deny the insolvency of G. W. Peckham at the time of his death, but say that only such assets as this bank had received as a pledge for his indebtedness were received by it through the administration of his estate.

In this connection, they say that the cross-complainants retained the properties conveyed to it by Peckham as owners in fee simple and not as a lien holder; that had the substitute trustee elected to rescind such transactions as he now claims were fraudulent, it would have required a tender back of the properties to G. W. Peckham or his estate and vested title in the estate of G. W. Peckham, and, in the event of a liability on the part of this bank for the monies expended for the purchase price, it would have had an equitable lien as security for said properties in the hands of the administrator and the properties themselves should have first been applied to the claimed indebtedness herein. Therefore, it would have required a claim to have been presented against the estate of G. W. Peckham to his administrator and upon a disallowance of such claim suit, in order to establish the same, was required under the Texas statutes to be filed in ninety days from the disapproval of said claim, none of which was done. The liability in such respect, if any existed, would be a primary liability against G. W. Peckham and his estate and only in the event the properties or the assets belonging to the estate of G. W. Peckham were insufficient to pay the same could any liability be asserted against the bank, and the said Royalty Company, having failed to present a claim and having failed to follow the statutes relating to the administration of estates of decedents in filing a suit within ninety days after the rejection of said claim, is forever barred from prosecuting any claim against the estate of G. W. Peckham, deceased, and being barred against one primarily liable for such alleged indebtedness, they are estopped and barred from enforcing any liability against those who may be liable only secondarily.

334

Wherefore, these defendants say that the failure to promptly elect, the failure to present any claim, and the failure to file any suit on such claim has estopped and barred said cross-complainants from asserting any liability against these defendants.

335 LV.

In reply to paragraph LIV, these defendants say that they are without knowledge or information as to the purchase price of the tract of land mentioned in subdivision (1) of paragraph LIV, or as to whether or not the mineral estate was acquired at a time its value was fluctuating. They admit that G. W. Peckham conveyed a 3/16ths of a 1/8th royalty in said land to the Wichita Royalty Company under contract of March 12, 1923, for a consideration of $7,500; that the property was owned jointly by Peckham and B. L. Fain and that the payment was made, of $2,500 cash, directly to B. L. Fain, one of the joint owners; that the bank had no knowledge of the details of the transaction or the purchase of said property, but say that all of the details are well known to E. E. Scannell; that the books and records of the Wichita Royalty Company reflected fully the transaction and that the bank and the other defendants would in nowise be liable for the purchase price of said property.

These defendants say that they are without information and knowledge to sufficiently answer subdivision (5) of paragraph LIV, and, therefore, neither admit nor deny the facts therein stated.

But they say in reply to subdivisions (6) and (7), of paragraph LIV, that the sum of $2,516.67 represented a part of the purchase price of a royalty sold to the Wichita Royalty Company owned by G. W. Peckham and B. L. Fain, and that on May 8th G. W. Peckham paid to B. L. Fain the amount of $2,516.67, representing again Fain's interest in said purchase price; that the sum of $2,533.33 representing the transfer from the Wichita Royalty Company to the individual account of G. W. Peckham was a part of the purchase price of said royalty belonging to G. W. Peckham. The defendants deny that the account of G. W. Peckham on May 11th was only $2,836.43, but was in the sum of $4,480.67.

336 In answer to subdivision (8) of said paragraph LIV, these defendants deny that any part of the $3,050.60 was trust funds paid upon the personal indebtedness due by Peckham to the bank; that on said date the said G. W. Peckham had funds, in addition to any funds transferred from the account of the Wichita Royalty Company, in the sum of $3,088.59, or more than sufficient of his own personal funds, without regard to any funds realized from transfers aforesaid, with which to make said payment and that the bank had no knowledge and was not charged with knowledge that Peckham by virtue of said transaction was unfaithful to his trust or that he was using the money of the Wichita Royalty Company to pay his private debt, and that said payment did not charge the bank with any knowledge of a wrongful use of the funds of the Wichita Royalty Company by Peckham, or charge them with any knowledge to look to the application of such transfers.

In reply to subdivision (9) of the said paragraph LIV, these defendants deny the facts therein alleged, in so far as the same create any liability against these defendants or charges them with any actual or constructive notice of Peckham's fraudulent conduct in dealing with trust property or trust funds, and deny that the bank had no right to permit the transfer of additional or further funds or to cut off Peckham's salary as trustee, or to interfere with the management of the trust by Peckham.

In reply to subdivision (10) of said paragraph, these defendants say that they are without knowledge as to the amount of oil that said royalties produced, but say that the Wichita Royalty Company and its trustee, including Scannell, have continued to hold said property for a period of more than thirty years and are estopped now to assert any liability against these defendants by reason of said purchase.

337 In reply to subdivision (11) of said paragraph, these defendants deny that Scannell was without

knowledge of these transactions and say that Scannell knew all the facts and was therefore charged with the legal effect of such knowledge.

In reply to subdivision (12) of said paragraph, these defendants deny that the trustee is now possessed with the power to elect or to make a tender. Having with full knowledge received said properties and depleted the same, he cannot now claim the right to rescind and collect the money back and to fix a liability against the plaintiff bank and these defendants, or to assert any equitable lien thereon. If such rights ever existed, they are barred by the equitable doctrine of laches and by the statutes of limitation, which these defendants plead in bar of the right of the cross-complainants to recover anything thereby.

In reply to subdivision (13) of said paragraph LIV, these these defendants deny that the cross-complainants have any right to credit the purchase price against the royalties produced, to charge the plaintiff bank and the defendants herein with interest, and deny the legal conclusions pleaded in said subdivision (13).

LVI.

In reply to paragraph LV, these defendants say that the sum of $1,200 represented the purchase of a Studebaker automobile, 1924 Model, which cost on the market new $1,800. Said automobile was used by Peckham in the transaction of business of the Royalty Company. The Royalty Company received and used the said car, obtained the benefits therefrom, and sold the same some two and one-half years later for $555 and received credit therefor, all of which facts were known to Scannell, as he was the bookkeeper and secretary and treasurer and handled the transactions, and he is therefore
338 estopped now, twelve years later, to assert a liability against the bank by reason of said

transaction, and that the bank was entirely ignorant of any wrongdoing, if any existed, in Peckham selling his automobile to said company at a loss of $600.

LVII.

In reply to paragraph LVI, and to each and all of the subdivisions thereof, these defendants say that G. W. Peckham, together with other associates, including Dr. J. H. Massie, on and prior to April 22, 1924, purchased a substantial royalty interest out of the L. F. Wilson Pasture; that the entire purchase price of the same, upon information and belief, represented the expenditure of approximately $150,000; that said royalty was purchased for resale and that G. W. Peckham only had a small interest therein; that the title was taken in the name of G. W. Peckham only for convenience; that a part of the cash that was put up for the purchase price of said property was $75,000, which was put up by Dr. J. H. Massie, who is now dead, and other parties unknown to the defendants herein contributed other sums, including G. W. Peckham; that said royalties so acquired were resold in units; that some were sold to the United Royalties Company, the King Royalty Company, and various others whose names are unknown to the defendants herein, but in this connection these defendants charge and allege that the 1/64th interest sold to the Wichita Royalty Company was sold at less than its fair market price at said time and substantially less than the other like interests were sold to the other purchasers; that said royalty was a valuable oil producing property; that Scannell was familiar with the transaction; that the Wichita Royalty Company has kept said property during all of said time, for a period of over twelve years, depleted the same, and used and converted the proceeds therefrom; that said royalty produced up to the time of the sale
339 more than the purchase price, so these defendants allege upon information and belief.

These defendants further deny that G. W. Peckham paid the bank any sum on March 18th upon his personal liability. These defendants say in this connection that W. H. Peckham paid a sum of $10,026.75 upon a liability which he owed to said bank; that there was no payment to said bank on G. W. Peckham's personal liability of $5,500 and no payment to said bank by reason of said transactions out of any trust funds, or any funds transferred to the individual account from the account of the Wichita Royalty Company; that G. W. Peckham had more than sufficient funds to pay the total $10,026.75 on said dates, without resorting to the use of any funds transferred to his account from the Wichita Royalty Company.

In reply to subdivision (4) of said paragraph, these defendants say that they are without knowledge or information as to the amount of oil this property has produced, but say that the said Wichita Royalty Company has owned and claimed the same up until the time of its sale, shortly before the death of the trustee, G. W. Peckham, and cannot now claim a rescission of said transaction.

LVIII.

In reply to paragraph LVII, these defendants say that they are without sufficient knowledge and information upon which to base a denial or admission of the facts set forth in said paragraph LVII, but say that they had no knowledge of any improper conduct on the part of G. W. Peckham in the purchase of said White lease or the transfer of funds therefor; that they presumed and had the right to presume that G. W. Peckham was rightfully transferring funds from the account of the Wichita Royalty Company to his individual account, and received no benefit therefrom, and that the bank should not
340 be charged with any sum whatsoever by virtue of said transaction and that no accounting should be had to determine any sums owing by the bank to said cross-complainants.

LIX.

In reply to paragraph LVIII, these defendants deny that any sum represented by the payment of $5,100 on November 3, 1934, was paid from trust funds; that at the date of said payment G. W. Peckham had on deposit in said bank unquestioned funds belonging to himself individually, not including any transfers from the account of the Wichita Royalty Company, in excess of the sum of $5,100. To be exact, his deposit balance, without taking into consideration any sums theretofore transferred to it from the Wichita Royalty Company, on said date was $5,512.77. Therefore, no liability could exist by reason of said transaction against the plaintiff bank and these defendants.

LX.

In reply to paragraph LIX, these defendants say that said transaction was a purchase by G. W. Peckham for the Wichita Royalty Company from Ray & Massie of the property in question for a consideration of $2,500, which sum Peckham advanced personally and was reimbursed; that the title to said royalty ran from Ray & Massie to the Wichita Royalty Company; that the plaintiff bank and these defendants received no benefit from said transaction and had no knowledge of the same, and that there is no liability for an accounting against them in respect thereto.

LXI.

In reply to paragraph LX, these defendants say that no portion of the sum of $2,500, represented by the transfer of said sum from the Royalty account to G. W. Peckham's individual account, was in Peckham's personal account on May 12, 1925; that while said $2,500
341 was not funds, nevertheless no part of the payment of $4,056 made by Peckham to the bank

on May 12th included any portion of said sum of $2,500 and that no sum whatever, representing monies from the transfer of funds from the Royalty Company's account to Peckham's account, was included in the payment to said bank on said date and they deny that $1,386.92, or any other sum included in said payment, was the trust's money.

LXII.

In reply to paragraph LXI, these defendants deny that any part of said $66.67 represented trust funds or monies transferred from the account of the Wichita Royalty Company to the individual account of G. W. Peckham; that the said G. W. Peckham on said date had a balance of $602.54, irrespective of any sums received on transfers from the account of the Wichita Royalty Company.

LXIII.

In reply to paragraph LXII, these defendants say that the property in question was acquired by G. W. Peckham for the Wichita Royalty Company at a cost of $11,000; that he only reimbursed himself for the money actually expended and the bank had no notice or knowledge, and there was none, of any fraudulent or wrongful conduct in the transaction; that said properties have been retained by the Wichita Royalty Company since July, 1925, it has received the oil produced therefrom and depleted the same, it has taken no action until this time, that is, a period of some twelve years has elapsed since the acquiring of said property, and that Scannell knew all about the transaction and said cross-complainants are estopped to complain thereof.

LXIV.

In reply to paragraph LXIII, these defendants say that on September 24, 25, G. W. Peckham had on
342 deposit in his personal account of funds unquestioned, irrespective of any funds transferred

from the account of the Wichita Royalty Company, the sum of $5,245.63 and that no part of said sum of $3,869.25 represented funds transferred from the account of the Wichita Royalty Company or trust funds.

LXV.

In answer to paragraph LXIV, these defendants say that the Highland Irrigation Company was a corporation duly incorporated and the payment by G. W. Peckham of an indebtedness to said company upon check drawn upon his personal account would create no liability against the plaintiff bank, or its officers, or against J. T. Harrell, and deny that any sums paid to the Highland Irrigation Company was trust funds at the times therein alleged.

LXVI.

Answering paragraph LXV, these defendants deny the facts set out therein and say that on the date of May 15, 1926, G. W. Peckham had on deposit in his individual account the sum of $916.57, irrespective of any funds transferred to said account from the account of the Wichita Royalty Company, and that no part of said $550 paid to said bank on said date was trust funds.

LXVII.

In answer to paragraph LXVI, these defendants deny that on August 10, 1926, any part of said $550 constituted trust funds or funds from the deposit account of the Wichita Royalty Company.

LXVIII.

In reply to paragraph LXVII, these defendants say that on January 19, 1927, Peckham paid on his personal in-

debtedness to the bank $2,506.12; that said payment was made by a check drawn by G. W. Peckham in-
343 dividually upon his personal account and applied against G. W. Peckham's individual indebtedness; that applying the minimum balance rule of said funds the sum of $914.71 represents funds transferred to said personal account from the account of the Wichita Royalty Company, but in this connection these defendants deny that same was trust funds or that the bank had any notice or knowledge of the character of such facts, if they were in fact wrongfully transferred.

LXIX.

In reply to paragraph LXVIII, these defendants say that on March 16, 1927, Peckham had on deposit personal funds, without considering any sums transferred to his personal account from the deposit account of the Wichita Royalty Company, the sum of $1,601.52, and therefore no part of said check of $1,500 represented funds received on transfer from the account of the Wichita Royalty Company, and these defendants therefore deny that he made any payment on said date to said bank from trust funds.

LXX.

In reply to paragraph LXIX, these defendants say that the purchase in question was made by transfer from B. L. Fain of an oil assignment; that the Royalty Company paid B. L. Fain the purchase price thereof and that these defendants were without any knowledge or notice of any interest which Peckham may have had in said property, and deny that the plaintiff bank and the co-defendants herein are liable in any amount by reason of said transaction or that the said Wichita Royalty Company is entitled to an accounting for said $3,000 and interest.

LXXI.

In reply to paragraph LXX, these defendants say that on October 15, 1927, Peckham caused a transfer of $2,-

400 to be made from the account of the Wichita Royalty Company to his individual account upon a check
344 duly signed by E. E. Scannell drawn on the account of the Wichita Royalty Company; that the voucher originally accompanying the check had been detached before the check was presented to the bank and the bank had no notice or knowledge of the contents of the voucher, or the purpose for which the said check was given, and followed the instructions of the trustee as to the deposit and that G. W. Peckham was the only one in charge who had authority to direct the transfer of such funds, and the bank had no knowledge of any improper use of such funds or any intended misapplication thereof and denies that it received any trust funds on said date in payment of Peckham's personal liability.

LXXII.

In reply to paragraph LXXI, these defendants deny the facts stated in the above paragraph. They say that on said date Peckham had on deposit, of funds unquestioned, irrespective of any transfers from the account of the Wichita Royalty Company, the sum of $5,013.15. Therefore, no part of said sum of $3,163.78 was funds received by transfer from the account of the Wichita Royalty Company or trust funds.

LXXIII.

In reply to paragraph LXXII, these defendants say that the note and interest in question, for which the check of $4,200 was issued and paid, was an obligation owing by G. W. Peckham to Dr. J. M. Sweeton, a Methodist minister of this city; that it was a valid debt and was paid by G. W. Peckham, and the transaction would create no suspicion on the part of the bank and its officials that G. W. Peckham was acting wrongfully or fraudulently in making payment of said sum of $4,200 to this respected

minister of the gospel, and that no part of said
345 sum was trust funds. Peckham had on deposit at said time in his individual account $4,232.60, irrespective of any sums augmenting his account from transfers from the deposit account of the Wichita Royalty Company.

LXXIV.

In reply to paragraph LXXIII of said cross-complaint, these defendants deny that any part of said sum of $2,013.33 paid by Peckham on January 12, 1929, was funds augmenting Peckham's personal account received from the deposit account of the Wichita Royalty Company, and deny that $234.2[illegible] was trust funds and on the contrary say that Peckham on said date had on deposit $2,216.79, without considering any sums augmenting his account transferred from the account of the Wichita Royalty Company.

LXXV.

In reply to paragraph LXXIV, these defendants say that the records show that F. O. Harrell made the transfer of this interest direct to the Wichita Royalty Company; that the plaintiff bank and the other defendants had no knowledge of any personal interest that G. W. Peckham had in the transaction and therefore would in no event be liable if there was any improper dealing between Peckham and the trust in respect to said transfer. These defendants do not admit that Peckham had any interest in said transaction, but say that they are without sufficient knowledge upon which to predicate either an admission or denial and therefore deny that there was anything improper in said transaction, or that Peckham had any personal interest therein.

Furthermore, these defendants say that the transaction occurred more than twelve years ago; that the Roy-

alty Company has owned and held said properties all the time and has depleted the same, and cannot
346 now in good conscience and equity repudiate the transaction and retender the property, so as to create a liability against the plaintiff bank and these defendants.

LXXVI.

In answer to paragraph LXXV, these defendants deny the allegations contained herein that the records of the plaintiff bank were not available for inspection by the cross-complainants, and say that at the time G. W. Peckham died that E. E. Scannell was tendered full access to all of the records of the plaintiff bank and that he inspected many of them; that photostatic copies of the individual ledger sheets of the Royalty Company, G. W. Peckham, and of the liability ledgers of the said Royalty Company and G. W. Peckham were furnished to the cross-complainants more than five years ago, and that the plaintiff bank, J. T. Harrell, and the other defendants herein have at all times furnished to the said E. E. Scannell and his attorney complete information and the right to inspect all of the books and records of the bank relating to said accounts and transactions, and these defendants deny that any defalcations of G. W. Peckham were accomplished through the facilities of the bank and its officers. They do say, however, that during this period of time, from 1923 up to the time of the death of G. W. Peckham, there were numerous entries and cross-entries, charges and counter-charges, debits and credits in the various accounts of the parties; that there were the issuance of drafts, cashier's checks, and traveler's checks; that there were the payment of notes and the entry of credits, numerous and many, sometimes several on one day, and this is especially true with reference to the account of G. W. Peckham; that it was an active account from the year 1923 up to the time of his death and that during this period he deposited in his individual
347 account the sum of $1,683,534.13, consisting of 1,010 separate items; that only 46 of the 1,010

items came from the account of the Wichita Royalty Company; that 964 items making up this deposit came from sources unquestioned and unchallenged; that of the total deposits made during this period of time to Peckham's account only 11% thereof represented transfers from the account of the Wichita Royalty Company, and, to require the bank to check and recheck cross-entries, deposits, debits and credits would render it impossible for a bank to do business with a fiduciary; that said bank during all of said period of time was a commercial bank, well regarded in the city and section, was managed by a board of directors, it had numerous active officers, many tellers, bookkeepers, clerks; that those agents and representatives of the bank which handled the deposits did not as a rule handle the loan transactions or the receipt of payments on loans. It was not usual or customary when a customer made a payment upon his loan for the agent or officer of the bank receiving such payment to look up his deposit balance, or to inquire from whence the funds came that was accepted in payment on said loans; that all the payments that this bank received from G. W. Peckham upon his personal indebtedness during said period of time was upon checks signed by G. W. Peckham upon his personal account; that it never received any funds of the Wichita Royalty Company earmarked as such and it had no right to believe or assume that Peckham was acting wrongfully in the making of payments to it upon indebtedness owing to it upon checks drawn upon his personal account.

In this connection, the plaintiff bank and the defendants herein say that the accounts are not confused between the respective parties and that the individual
348 liability and records of the bank fully disclose the liability of G. W. Peckham as an individual, the liability of the Wichita Royalty Company as a trust; that all of this information is and has been in the possession of the cross-complainants for a long period of time; that the bank has from time to time tendered and the

cross-complainants have inspected and received the various books and records called for, and, while the cross-complainant has furnished to the plaintiff bank and its officers certain of its books and records, it has refused to deliver to them all of the same. It has refused to deliver to the plaintiff bank a list of the shareholders and a list of all of the checks issued during the period of time G. W. Peckham was trustee, or the books showing the cash receipts in detail, or the various audits of the Wichita Royalty Company, all of which have been withheld by said cross-complainant.

The plaintiff and these defendants further deny that they are indebted to the Wichita Royalty Company and E. E. Scammell, its trustee, in any sum whatsoever, either upon a deposit liability or upon any other kind of an action sounding in tort, or otherwise, and that there was no participation in any fraudulent or dishonest conduct between the bank and its officials and G. W. Peckham during the tenure of Peckham's office as trustee. They deny in toto, except as herein admitted, all of the facts set forth in paragraph LXXV.

LXXVII.

In reply to paragraph LXXVI, these defendants deny that they received any funds in payment of Peckham's private debt which were trust funds. They deny that but for such transfers and such alleged trust peculations Peckham would have been wholly unable to pay
349 the bank the monies which he personally borrowed from it, or that the bank received any profit therefrom, but on the contrary the plaintiff bank never made any profit but sustained a loss from the various transactions herein complained of; that during the period of time involved Peckham's personal indebtedness to the bank increased, the indebtedness of the Marlborough Addition increased, and there was no substantial reduction of the indebtedness due by the Wichita

Royalty Company. The Marlborough Addition was the debtor of the bank, Peckham was the debtor of the bank, and the Royalty Company was the debtor of the bank. Peckham at the time of his death owed the bank in excess of $25,000, the Wichita Royalty Company owed the bank in the sum of $27,000 and, in addition thereto, one-half of the contingent liability as an indorser on the indebtedness of the Marlborough Addition. So it is apparent that the bank did not seek to or profit from the transfers of funds from the account of the Wichita Royalty Company to the individual account of G. W. Peckham.

## LXXVIII.

All of the transactions herein complained of arose more than two years prior to the filing of the original cross-action and arose more than seven years prior to the filing of this amended cross-complaint. The transactions complained of were continuous over a period from 1923 until 1929, isolated in their nature. G. W. Peckham was the sole trustee of the Wichita Royalty Company. He was the one and only one in authority. He was a man of good reputation and of large business dealings, reputed to be wealthy. Scannell, the substitute trustee, was the bookkeeper and secretary and treasurer during the period of time that G. W. Peckham was trustee. He was
350 the bookkeeper and secretary and treasurer of the Wichita Royalty Company prior to the time Peckham became trustee. He was an experienced bookkeeper. The Royalty Company has held the properties, or substantially all of them, continuously since the date of acquirement. G. W. Peckham is dead. He died suddenly. Those passing upon the charges herein made against him are without the benefit of the information which he could give and this plaintiff bank and the interpleaded defendants say that it would be inequitable to thus fix a liability upon said bank and its officers and directors for transactions occurring over a period of years from 1923

to 1929, and that the retention of the properties by the Wichita Royalty Company, the access to the books and records by the stockholders thereof during said period of time, the knowledge on the part of G. W. Peckham and E. E. Scannell of the various transactions, and of the delay in making any election or bringing any action creates an estoppel against the Royalty Company to assert a liability against the plaintiff bank and these defendants.

LXXIX.

Defendants show that the Wichita Royalty Company and its trustee, E. E. Scannell, seek herein now to repudiate title to certain royalties and other oil properties which it is claimed were wrongfully assigned by G. W. Peckham as an individual to G. W. Peckham as trustee of the Wichita Royalty Company, and at the same time seek to fix liability against the old bank and the other defendants on the theory that said old bank is liable for the alleged wrongs of the said G. W. Peckham; that if the old bank or any of the other defendants are responsible legally for the wrongs of G. W. Peckham, then in equity and in good conscience said defendants are entitled to a lien upon said properties, the title to which may be
351 repudiated both as against the Wichita Royalty Company and E. E. Scannell, and against the heirs at law of G. W. Peckham, as well as the administrator of his estate; that among the other properties, title to which has been so attempted to be repudiated and an attempted election has heretofore been made to repudiate the same, are the royalties in Wheeler and Gray Counties, Texas, which royalties are as follows:

Wheeler County.

(a) 1/128 plus 15/32 mineral interest as royalty in the NE ¼ of Section 47, Block 24, H&GN Ry. Co. Survey, Wheeler County, Texas.

(b) 1/256 plus 1/64 mineral interest as royalty in the W ½ of the SE ¼ of Section 43, Block 24, H&GN Ry. Co. Survey, Wheeler County, Texas.

(c) 1/256 plus 15/64 mineral interest as royalty in the E 1/2 of Section 54, Block 24, H&GN Ry. Co. Survey, Wheeler County, Texas.

(d) 1/16 mineral interest as royalty in the NW 1/4 of Section 44, Block 24, H&GN Ry. Co. Survey, Wheeler County, Texas.

(e) 1/16 mineral interest as royalty in the N 1/2 of Section 45, Block 24, H&GN Ry. Co. Survey, Wheeler County, Texas.

(f) 1/16 mineral interest as royalty in the E 1/2 of Section 57, Block 24, H &GN Ry. Co. Survey, Wheeler County, Texas.

Gray County.

(a) 1/4 mineral interest as royalty in W 1/2 of the SE 1/4 and the NE 1/4 of the SE 1/4 of Section 59, Block 25, H & GN Ry. Co. Survey, Gray County, Texas.

(b) 1/8 mineral interest as royalty in S 1/2 of Section 61, Block 25, H&GN Ry. Co. Survey, Gray County, Texas.

(c) 1/64 mineral interest as royalty in NW 1/4 of Section 60, Block 25, H&GN Ry. Co. Survey, Gray County, Texas.

These defendants show that they are entitled to, under the circumstances herein set out, and seek to have now enforced all such equitable rights and liens upon such properties, including the properties in Gray and Wheeler Counties, Texas.

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## LXXX.

Defendants show that upon the death of G. W. Peckham on the .... day of November, 1929, and shortly thereafter, when E. E. Scannell was appointed as substitute trustee, the said Scannell, as such substitute trustee, became possessed of all the facts of which he is now possessed and which he pleads as a basis for recovery herein, for the reason that he knew all the details regarding the Marlborough transaction and he knew of the purchases now alleged to have been made by Peckham, Trustee, from Peckham as an individual, he knew the full details of the manner in which the banking account of the Royalty Company had been handled through the old bank, the manner in which the checks had been drawn, and the fact that a part of the business of the Royalty Company had been conducted through the personal account of Peckham. In this connection the defendants show that upon the request of the said Scannell the old bank opened all its books and records to the said Scannell and he was given full and complete authority to make any inquiry into the transactions had by Peckham as trustee or as an individual, so far as same were reflected by the books of the old bank, and no effort of any kind was made by any of the defendants to withhold from him any information which he might desire. That shortly after the death of the said Peckham and, to wit, on the 16th day of December, 1930, the said Scannell caused a claim to be filed against the estate of the said Peckham, which in substance charged the said Peckham with embezzlement, in that it charged that he had used funds belonging to the Royalty Company for his own personal use to the extent of more than $19,000. At least from such time thenceforth there was no effort or reason, if there
353 was ever any effort or reason, for withholding from the public generally knowledge of the alleged wrongs upon the part of Peckham. That it now appears that the manner in which the Royalty Company's business was conducted was such that the substitute tru-

tee, whoever he might be, was the only person who had right or authority to act, but that upon the death of Peckham each and every shareholder was notified, or sought to be notified, of the fact of his death and the fact that his death had been sudden, which notice placed each and every shareholder upon notice or knowledge of the fact that an accounting would be necessary to be had between the substitute trustee and the estate of the deceased trustee; that the whole of this matter was left actually to Scannell; that if it should appear that Scannell did not have any of the facts which he now claims to have, he was in position to have gained the facts; he had sole possession of all the books and records of the Royalty Company; he had access to the books and records of the old bank; all the checks drawn by Peckham were monthly returned to the Royalty Company and were in Scannell's possession; he was placed upon notice and had actual knowledge of the fact that according to him Peckham had been guilty of actual defalcation; he had actual knowledge that in certain circumstances, at any rate, Peckham had caused royalties to be transferred from himself as an individual to himself as trustee; he had actual knowledge of the transaction known as the Marlborough transaction. All of such placed upon him the duty of action not only as to Peckham but as to the old bank, either of affirmance or disaffirmance of said transactions, this particularly because of the fluctuating nature of the value of the oil properties and royalties and of such property as
354 the Marlborough Addition. And he, the said Scannell, elected to hold all of said properties, not only the Marlborough properties, but as well all the oil and gas properties of which complaint is made. Had said properties continued to enhance in value, this election on the part of Scannell would have forever prevented either the old bank or the estate of Peckham from claiming said properties and would have placed the Royalty Company and Scannell and the stockholders in a position where they could not have gotten the benefit of these properties. Scannell was charged in law and by the

necessities of the case with the duty of making the election which every principal owes to his agent and every beneficiary to his trustee, namely, an election within a reasonable time after the termination of a relationship, to affirm or disaffirm alleged wrongful transactions, and such affirmation upon the part of the said Scannell is here pleaded to forever preclude plaintiffs from complaining of any item other than actual misappropriations by the said Peckham. In this connection it is pleaded by Scannell that for a time he was under the influence of his former connection with the said Peckham, who was his friend, and he sought to secrete the facts, but he admits that on the 30th day of December, 1930, he filed a claim, the substance of which was to charge his former friend with embezzlement, and from such time henceforth he was out from under said influence. And in this connection further it is alleged that Scannell for a time sought to secrete the facts in an effort to get the money from the insurance of Peckham, but this had ceased at the time of the filing of said claim. Furthermore, it is alleged that Scannell did not know his legal rights, but he knew the facts which charged him to know his legal rights. At or shortly prior to the institution of his original cross ac-
355 tion herein on the .... day of April, 1931, the said Scannell, having consulted his present attorneys, was in full possession of knowledge of his legal rights and knew or was charged to know all the facts which now form the basis of his cross action. He was then and there charged with the duty of affirming or disaffirming all transactions which he, as substitute trustee, ever expected to affirm or disaffirm. At that time he knew that the old bank not only denied liability to him as trustee or to the Royalty Company for any sums, but that the estate of G. W. Peckham also denied such liability, and if he had any rights it was his duty then and there to assert them. At said time he did not complain of any of the transactions set out in paragraphs numbered 9-14-34 and 50 to 75 Inc. of his amended cross action, but in all things affirmed said transactions, and he in nowise

indicated that he continued to hold said properties as any form of security for any claimed indebtedness upon the part of Peckham's estate to the Royalty Company and never alleged or claimed that there was any liability on account thereof. Such acts of affirmation and such acts in failing to disaffirm forever preclude any complaint now being made of said transactions set out in the cross-action herein filed and particularly paragraphs 9-14-34 and 50 to 75 Inc., thereof. His failure so to disaffirm said transactions, coupled with the great lapse of time and the nature of the properties operates by way of laches to forever bar any right so to disaffirm same, and said rights are likewise barred by the statutes of limitations of the State of Texas, which are here pleaded.

356 LXXXI.

Further answering herein by way of affirmative defense, these defendants, including the plaintiff bank, say that all of the facts alleged by the cross-complainant Wichita Royalty Company (with the exception of two or three items occurring after Peckham's death and which were transactions of Scannell) occurred during the lifetime of G. W. Peckham; that the Wichita Royalty Company was operated by G. W. Peckham as sole trustee and by C. E. Scannell, who was the bookkeeper and secretary and treasurer and who kept the records and office; that the said Scannell and Peckham from time to time furnished the stockholders of the Wichita Royalty Company with statements of the affairs of said company, and that all of said transactions occurring during the lifetime of G. W. Peckham were known to both Peckham and Scannell prior to the death of Peckham and could have been known by the exercise of ordinary diligence by the shareholders of the Wichita Royalty Company, as the books were open to public inspection on the part of the shareholders at any and all times, and that said shareholders, as well as the officers, including Scannell, could have discovered each and all of said transactions as are now

asserted prior to the death of the said G. W. Peckham; that the defendants are guilty of no concealment and no misrepresentations preventing the said Wichita Royalty Company and its officers and shareholders from discovering these facts prior to the death of G. W. Peckham and since the death of G. W. Peckham. These defendants say that the transactions complained of cover a period beginning in the year 1923. That many of the transactions complained of, in order to correctly ascertain the truth, would require the explanation of G. W. Peckham and that G. W. Peckham died in November, 1929, and nearly two years elapsed from the death of G. W. Peckham unt l the first cross-complaint was filed against these defendants, and more than six years elapsed be-
357 fore the filing of the present cross-complaint, after the death of G. W. Peckham, setting up additional liability in the amount of $115,000; that other parties connected with the transaction have died, namely, J. A. Kemp, who was a joint owner of the Marlborough Addition, J. H. Massie, who was interested in a transaction known as the Wilson Royalty, upon which a claimed liability was not originally asserted but which is now asserted since the death of J. H. Massie, and that these interpleaded defend nts are without the testimony of G. W. Peckham and without the testimony of the other parties involved in the transactions, who are now dead, and that the said cross-complainants are therefore guilty of laches and are barred by the equitable doctrine of stale demand in failing to bring this lawsuit or assert the proposed cause of action during the lifetime of G. W. Peckham, which these defendants allege that said cross-complainant and its constituent members had knowledge of all the facts or had sufficient knowledge to have placed a reasonably prudent person upon notice, and, had suit been brought during the lifetime of G. W. Peckham, these defendants would have had the benefit of such explanations and reasons concerning the various items and transactions complained of of the said G. W. Peckham, and by reason of the failure of the said cross-complainants to assert their cause of action during the lifetime of G. W

Peckham, they are now estopped to assert the same against these defendants, including the plaintiff bank, by reason of laches and stale demand and limitation, all of which these defendants, including the plaintiff bank, now plead in bar of the cross-complainants' right to recover herein.

358 In this connection, these defendants further show that, as herein set out, at the end of each month the old bank returned to the Royalty Company the canceled checks of the Royalty Company, together with a statement of its deposits; that this continued from the time of Peckham's appointment as substitute trustee up until after his death; that no complaint was ever made by any one of the bank of the manner in which Peckham was handling the business of the Royalty Company; that the bank did not know in fact, and was not charged to know in law, the details and manner in which the Royalty Company conducted its intercorporate business and had a right to assume that some form of check or audit into the method in which the business was being conducted would be made; that it now appears that the so-called shareholders of the Royalty Company contracted that they would not make any check or inquiry into the conduct of the trustee, and it now appears that they failed and refused to make any inquiry into the method in which he was doing business; that if there was in fact any wrong in the method in which the said Peckham conducted the business of the Royalty Company the shareholders, and each and all of them could have easily ascertained such, and should have ascertained such and should have notified the bank of such, but, having failed to do so and having lulled the bank into a sense of security with the belief upon the part of the bank that the business was being conducted properly, said shareholders and the Royalty Company itself are now estopped to complain of the manner in which said business was continued to be conducted; that had any complaint been made the bank would and could have corrected the same, but, in the absence of complaint, the bank was justified in believing that the same

was being properly conducted; that in keeping
359 with the equitable maxim that he who trusts most must suffer most, the shareholders, in view of the trust they placed in Peckham, are now estopped to complain as against the bank, who relied upon this trust and upon the appearance of regularity.

Peckham was the only representative (except Scannell) of the shareholders; that all knowledge which Peckham had would therefore be necessarily imputed to the shareholders and they would be barred by Peckham's knowledge, even though it should be held that Peckham was acting wrongfully.

Wherefore, the plaintiff bank and these defendants having fully answered the cross-complaint of the Wichita Royalty Company and E. E. Scannell against the City National Bank of Wichita Falls, J. T. Harrell, Trustee; E. A. Deaton, Liquidating Agent; and W. H. Peckham, Administrator of the Estate of G. W. Peckham, Deceased; Hazel Peckham, William Peckham, George Peckham, and Robert Peckham, surviving wife and children of G. W. Peckham, Deceased and the Texas Investment Company, a corporation, respectfully pray that said cross-complaint be dismissed and that said cross-complainants take nothing against the plaintiff and these defendants, and that the affairs of the City National Bank of Wichita Falls be wound up in an orderly manner in this proceeding, and in equity will ever pray.

WEEKS & MORROW,
BULLINGTON, HUMPHREY & KING,
Attorneys for City National Bank of Wichita Falls, E. A. Deaton, Liquidating Agent, Texas Investment Company, a corporation, and J. T. Harrell, Trustee.

T. R. BOONE,
Attorney for J. T. Harrell.

360 The State of Texas,
County of Wichita.

Leslie Humphrey, one of the attorneys for the interpleaded defendants and City National Bank of Wichita Falls, together with J. T. Harrell, defendant, being duly sworn upon their oath, depose and say that they have read over the foregoing answer and that the statements of facts therein made are true; that the statements upon information and belief as to facts as therein stated are verily believed by the affiants to be true.

J. T. HARRELL,
LESLIE HUMPHREY.

Sworn To And Subscribed Before Me, by Leslie Humphrey and J. T. Harrell, this 21st day of December, A. D. 1936.

MRS. GERTRUDE TURNER,
(Seal) Notary Public, Wichita County, Texas.

361 EXHIBIT "A".

Affidavit to Claim.

The State of Texas,
County of Wichita.

I do solemnly swear that the attached claim in favor of Wichita Royalty Company, a trust estate, against G. W. Peckham, deceased, is just and that all legal offsets, payments and credits known to me have been allowed.

The affiant further says that he is the sole trustee of the above company and that he makes this oath on facts which have become cognizant to him by virtue of his being the sole trustee of said company, and that said Wichita Royalty Company is the owner of said claim.

(Signed) E. E. SCANNELL,
Trustee.

Sworn and subscribed to before me by the said E. E. Scannell, in the capacity stated, this the 16th day of December, A. D. 1930.

(Signed) H. C. RICHARDSON,
Notary Public, Wichita County, Texas.

The above claim was presented to me on the .... day of ....., 1930, and after examining it, I hereby ..... this the .... day of ..... 1930.

.....,
Administrator of the Estate of G. W. Peckham, Deceased.

362 Payments by Wichita Royalty Company Unaccounted for by City National Bank During G. W. Peckham Administration Less Payments by G. W. Peckham on Behalf of Wichita Royalty Company.

To G. W. Peckham by Wichita Royalty Company:

| Date | | Check No. | Amount |
|---|---|---|---|
| 1-19-27 | | 571 | $2,000.00 |
| 2-19-27 | | 579 | 2,500.00 |
| 3-23-27 | | 591 | 2,000.00 |
| 6-18-27 | | 620 | 1,200.00 |
| 8-16-27 | | 635 | 1,500.00 |
| 10-14-27 | | 650 | 2,400.00 |
| 11-25-27 | | 657 | 1,800.00 |
| 11-25-27 | L. F. Wilson Royalty sold to Petroleum Royalties Corporation | | 5,700.00 |
| 2- 1-28 | Hattie Vaughn Royalty sold to American Mineral Spirits Company | | 5,700.00 |
| 4-20-28 | | 710 | 1,850.00 |
| | | | $26,650.00 |

By G. W. Peckham for Wichita Royalty Company:

| Date | Payee | Principal | Interest | Total |
|---|---|---|---|---|
| 8-31-27 | City Nat'l Bank | | $500.00 | $ 500.00 |
| 10-19-27 | City Nat'l Bank | $1,014.67 | 260.00 | 1,336.00 |
| 11-25-27 | City Nat'l Bank | 1,014.67 | 485.33 | 1,500.00 |
| 2-15-28 | City Nat'l Bank | 3,060.67 | 424.66 | 3,485.33 |
| | | | | 6,821.33 |

Balance Unaccounted for:

| | |
|---|---|
| Paid to G. W. Peckham | $26,650.00 |
| Less Disbursements by G. W. Peckham | 6,821.33 |
| Balance Due Wichita Royalty Company | $19,828.67 |

## ANSWER OF THE ADMINISTRATOR AND HEIRS OF W. PECKHAM, DECEASED.

Filed in U. S. District Court Dec. 21, 1936.

363 (Title Omitted.)

Pursuant to an order entered in this cause on the 3rd day of December, 1936, come now the interpleaded defendants, W. H. Peckham, administrator, Hazel D. Peckham, William Peckham, George Peckham, and Robert Peckham, and file herewith their answer, and for same say as follows, towit:

They hereby adopt as their pleadings the answer of the complainant City National Bank of Wichita Falls to the cross-complainants' recasted cross complaint and interpleader; its answer to the cross-complainants' recasted pleading against J. T. Harrell, et al; its answer and cross complaint to cross complainants' recasted pleadings against the City National Bank in Wichita Falls, et al; and its answer to the cross-complainants' plea in abatement adopting as their own all allegations of fact, pleadings, defense and cross-complaints of said pleadings of said City National Bank of Wichita Falls.

They have delivered to the attorneys for the cross-complainants copies, of this, their said answer.

Wherefore, the interpleaded defendants, W. H. Peckham, administrator, Hazel D. Peckham, William Peckham, George Peckham, and Robert Peckham, pray that this, their pleading and answer in said cause be filed in accordance with said order of December 3, 1936.

ARCH DAWSON,
Attorney for W. H. Peckham, Administrator, Hazel D. Peckham, William Peckham, George Peckham and Robert Peckham.

364 In the District Court of the United States Northern District of Texas, Wichita Falls, Division.

City National Bank of Wichita Falls, Texas,
vs. No. 358 Equity.
Wichita Royalty Company, et al.

Be It Remembered that the following is a full, true and correct statement in narrative form of all the evidence produced upon the trial of the above numbered and entitled cause, before the Honorable William H. Atwell, United States District Judge, for the Northern District of Texas, on the 2nd day of April, A. D. 1937.

Appearances:

Leslie Humphrey, Tarlton Morrow, both of Wichita Falls, Texas, appearing for the plaintiff bank and the interpleaded defendants, except J. T. Harrell and the Peckhams.

T. R. Boone, Wichita Falls, Texas, appearing for J. T. Harrell.

Guy Rogers, Wichita Falls, Texas, appearing for Wichita Royalty Company & E. E. Scannell.

Arch Dawson, Wichita Falls, Texas, appearing for W. H. Peckham, Administrator, et al.

365 (The following proceedings were had on March 27, 1937, at Wichita Falls, Texas.)

The Court:

According to docket entries in this cause, it reached this Court on July 25, 1936. The dilatory pleas were all ruled by December 3. A commissioner, who was appointed on September 9, 1926, according to the statement of counsel in open Court now, and the Court knows, has

been acting at the behest of parties, taking this testimony which has now been filed in Court, and covered something over three thousand pages, and the cause is set down and is on the trial docket for April 2, 1937, which is about the middle of next week.

Counsel for the defendants advise the Court now that he has found in the testimony so taken some inaccuracies of figures, in so far as his original cross action is concerned, and has discovered some new facts. Instead of pleading accuracy in figures in substitution for inaccurate figures, by appropriate paragraphs in his original cross action, which is the method permitted by the rules, and instead of pleading new facts in a separate instrument, he repleads his entire case, in some fifty or sixty pages.

Counsel for the complainant objects to that method because it would require them to answer the bill all over again, and because same is not in accordance with the equity rules.

I am inclined to hold with them, and also to join with counsel for the respondent, or the complainants
366 in the cross action asking them to show in what paragraph an inaccuracy has been stated, and then to plead that as they conceive to be the accurate way, and of course it would be wrong to deny them the right to plead a new fact. As in the motion, he says he has discovered some payment, or some claim by a certain check, as set down in the motion, and if and when the amendments are offered in that way, I will be glad to pass on them. As is now offered, that particular amendment, leave is denied.

In this order on the disclaimer by Guy Rogers Trustee, and the amended plea to the jurisdiction and motion to remand, and the amended answer of the Wichita Royalty Company, et al, to the complainant's bill, and the reply to the complainant's bill by Charles L. Black and Guy

Rogers, permission is given. But I have erased the pencil permission at the bottom of this order granting these two complainants and certain other defendants in the cross action to answer. I will grant that permission, of course, I will pass on that when they are presented. We like to go according to the rules if we can.

Mr. Humphrey:
I understand the equity rule applied as to answers filed, it will be presumed as no necessity, as I understand it, I do not think there is any necessity of his filing an answer under the equity rules, as to his answers.

The Court:
We go to seed in our state procedure in answering everything the other fellow makes. If he presents answers I will pass upon them at that time.

367 Mr. Morrow:
As to the plea of Judge Rogers and Mr. Black, we have filed a pleading that we do not question the validity of their mortgage to secure their fees and expenses, so there will be no controversy about that issue.

Mr. Rogers:
That is pending the final adjudication of the controversy?

Mr. Morrow:
Yes. It was a lien given to secure future advances as well as prior advances.

(The following proceedings were had on April 2, 1937):

Mr. Rogers:
In view of the confidential nature of the matters between the banking department and this bank, both in respect to the minutes of the bank and Mr. Gilbert's testi-

mony, I am not going into that matter. I am satisfied with the record on the question of solvency as it is.

(Whereupon the following testimony of the witnesses, taken before the commissioner, and documentary evidence, were introduced.)

368 Mr. Rogers:

Let the record show, that I am appearing here subject to the right to file a plea to the jurisdiction of the Court, and a second motion to remand, and appearing on account of the order of the Court that testimony be taken within a specified time.

Mr. Humphrey:

Let it be shown that while the answers as to the recasted pleadings were filed only yesterday, and that the case is not ripe for the taking of testimony, nevertheless, we consent to the taking of testimony, with the understanding that if the testimony is not finished by the first of January, that either of the parties shall have the right to continue the taking of the testimony pursuant to the regular rules in equity pertaining thereto, after the first of January.

Mr. Humphrey:

The plaintiff, City National Bank offers in evidence the following documentary evidence; first, the original declaration of trust of the Wichita Royalty Company, wherein R. R. Robertson was designated as trustee, dated the first day of June, A. D. 1920, recorded in the deed records of Wichita County, Volume .... Page ....; filed for record August 27, 1920, at 1:50 P. M. with the county clerk of Wichita County, Texas, and which instrument appears on pages 737 and 746 of the transcript of evidence on the former appeal. (Said instrument marked "Plaintiff's Exhibit No. 1, and reading as follows):

369 PLAINTIFF'S EXHIBIT 1.

Wichita Royalty Co. — Doc. of Trust.

The State of Texas,
County of Wichita.

This Declaration of Trust, made this First day of June, A. D. 1920, by R. R. Robertson of Wichita County, Texas. (hereafter called Trustee), Witnesseth:

First: That this Trust shall be designated and known as the Wichita Royalty Company, with principal office at Wichita Falls, Texas.

Second: That the said Trustee shall hold all the funds and property now or hereafter held by or paid to, or transferred or conveyed to him or his successor or successors as trustee hereunder in trust for the purpose, with the powers and subject to the limitations hereinafter declared, for the benefit of the cestui que trustent, (hereinafter called the stockholders), and it is hereby expressly declared that a trust, and not a partnership or joint stock association is hereby created; that neither the trustee nor the stockholders shall ever be personally liable hereunder as partners or otherwise, but that for all debts the trustee shall be liable as such to the extent of the trust funds only. In all contracts or instruments creating liability, it shall be expressly stipulated that neither the trustee nor the stockholders shall be personally liable.

370 Third: The general purpose of this company are to buy and sell oil and gas royalties and other oil and gas properties.

Fourth: The capital stock of this trust shall be One Million Dollars ($1,000,000.00) divided into one Million (1,000,000) shares of the par value of One Dollar ($1.00) per share.

Fifth: The certificate of stock shall be issued and signed by the Trustee, and shall be in substantially the following form, to-wit:

WICHITA ROYALTY COMPANY,
Wichita Falls, Texas.

(A common law Trust). Members Certificate of Interest.

This is to certify that ..... is the owner of ..... Fully paid shares of beneficial interest in the Wichita Royalty Company, a common Law Trust, transferable only on the books of the trust by the owner thereof in person or by duly authorized agent upon the surrender of this certificate properly indorsed.

This certificate of interest is subject to the provisions and covenants contained in the Declaration of Trust of the Wichita Royalty Company, dated the first day of June, A. D. 1920, and any amendments thereto, and the by-laws of said trust, present or future, and the provisions hereof.

No member of said trust, or owner or holder of this certificate, as such, shall have any authority, power or right whatsoever to do, or transact any business whatever for, on behalf of, or binding on the trust, or any member thereof, and no member of this trust shall be per-
371 sonally liable for any debts, covenants, demands contracts of any kind or torts of this trust beyond the payments in full of the price of which his share or shares were sold to him by the trust.

This certificate shall be the sole and only evidence of membership in said trust.

Witness the signature of the Trustee of said trust, this ..... day of ....., 19.....

All of the conditions and limitations stated in the above form shall be binding on each stockholder, his h. .rs, assigns and legal representatives, or any person holding certificates, and such certificates shall be transferred only on the books of the trust in accordance with the Declaration of Trust and the By-laws. Stockholders whose certificates stand in their names on the books of the trust shall alone be considered within the term of this instrument, and shall alone be entitled to receive dividends or have the rights of owners.

Any stockholder may at any time transfer or sell his share or shares, or any of them but each holder of a share hereunder, or of a certificate therefor, shall be held by the fact of his acceptance of it to have assented to this trust, this Declaration of Trust and the By-laws, and to all instructions given and acts performed in pursuance thereof.

372 In case of loss or accident destruction of the certificate of stock, the trustee may cause a new certificate to be issued on such terms as he may see fit.

Sixth: Stockholder in this trust shall have no legal right to the trust property of funds held from time to time by the trustee, as herein provided for, and especially shall have no right to call for any partition of the trust property or funds, or dissolution of this trust, but the shares shall be personal property carrying the right of division of the profits; and at the termination of said trust by expiration of the period fixed for its existence or dissolution otherwise, the stockholder shall be entitled to a division of the principal and profits in due proportion to the number of shares held by each.

Seventh: The death, insolvency or bankruptcy of a stockholder of this trust, or the transfer of his interest by sale, gift, devise, descent, or operation of law, or otherwise, during the life of the trust shall not work a dissolu-

tion thereof or have any effect upon the same, its operation or mode of business; nor shall it entitle his representatives, heirs, or assigns, to an account or to any action in the Courts, in law or equity, or otherwise, against the company, its stockholders, trustee, officers, or its property or assets or business operations, all of which shall remain intact and undisturbed thereby; but they shall simply succeed to the right of the original stockholder to the certificate of membership and the shares
373 it represents, subject to this Declaration of Trusts, and the by-laws, present and future.

Eighth: The entire affairs of this trust shall be managed by one trustee, who shall own at least one certificate of membership for not less than one Share, The Trustee may from time to time hire suitable offices for the transaction of the business of this trust; and he may appoint, remove or reappoint such officers, agents and other assistants as he may think best, define their duties and fix their compensation provided, however, that any person to be eligible to hold office of Vice-President, Secretary or Treasurer must be the owner and holder of at least one certificate of membership in this trust for not less than one share.

The title to all property acquired or to be acquired from time to time by this trust, and all investments shall be made and held in the name of the Trustee as such trustee, or his successors or successor, in office. The trustee in his capacity as such may sue and be sued in any Court of law or equity.

The trustee shall have full and exclusive power and authority to conduct the business and affairs of this trust, to purchase contract for, lease, or otherwise acquire, any property necessary or proper for the purpose of the trust; to sell and convey all or any part of the property of the trust; to borrow money on the credit of the trust; and, if he deems advisable to execute notes therefor secured by

a mortgage or deed of trust upon the property of the company, and generally to do all things which
374 in his judgment is necessary and prudent in the management and conduct of the business of the company; and he shall receive compensation commensurate with his services, to be determined by the officers and as provided by the by-laws.

Any debt incurred by the trustee shall be charged on the property of the trust in preference to the claim or claims or any stockholder as such; the trustee is authorized in the conduct of the business, to sell in due course of business the property, real or personal, of the trust, free of any incumbrance whatsoever, provided of course that any mortgaged property shall be sold in conformity with the terms of the mortgage or deed of trust theretofore given.

In the event the trustee should die, resign, refuse or become incapable to act as trustee, the Judge of the District Court of the Thirtieth Judicial District, comprising at present the counties of Wichita, Archer, and Clay, State of Texas, shall fill the vacancy created thereby by the appointment of a person qualified under this Declaration of Trust to act as trustee.

The Trustee may select a manager or managers for all or any part of the property or business of the trust, and may employ such agents, servants and employees, fixing their compensation and entrusting them with such authority and duties as he may deem wise; and the
375 trustee may appoint or contract with any person, firm, corporation, joint stock association, trust or company as fiscal agents for the sale of the beneficial interests and shares, or may sell all or part of such shares to such fiscal agents upon such terms and conditions of sale as may be fixed by contract entered into by such fiscal agents and the trustee.

The trustee shall declare dividends from the net income of the trust quarterly, or oftener, and his decision as to the amounts of dividends shall be final; provided, however, that at least once each year the total net profits arising from the operation of this trust shall be distributed among the stockholders in the ratio that the number of shares owned by each bears to the total number of shares then issued and outstanding.

Ninth: The Trustee, or his successor or successors, shall have no power or authority to bind the stockholders, or any of them personally; and in every written contract he shall enter into relating to the business of this trust, its property or any part thereof, reference shall be made to this Declaration of Trust; and the person, firm, joint stock association, trust company or corporation so contracting with him shall look only to the funds and property, legal and equitable, of the trust for the payment of any debt, damage, judgment or decree, or any money that may become due and payable in any way by reason thereof; and neither the trustee nor the stock-
376 holders, present or future, shall be personally liable therefor, or for any debt incurred, or any engagement or contract made by the trustee or any officer, agent or servant under him on behalf of the trust.

Furthermore, the funds and property of the trust of every character shall stand primarily charged with the burden of paying any claim or claims or money demand established or existing on account of the operation and business of the trust, whether founded on contract or tort, to the end that the stockholders may be protected from personal liability on account thereof.

In all deeds and conveyances to the trustee, or to his successor or successors, it shall be set forth that such grant, conveyance or transfer is to him as trustee of the Wichita Royalty Company, to be held subject to this De-

claration of Trust and the by-laws of the company, present or future.

Tenth: The Trustee may adopt such by-laws in harmony herewith as he thinks proper. This Declaration of Trust and the by-laws so adopted shall be signed and acknowledged by the trustee in the manner required by the laws of the State of Texas for the registration of conveyances of real estate, to the end that the same may be recorded if it be deemed necessary or expedient.

377 Eleventh: The Trustee, if at any time he deems it judicious so to do, may without the consent of the stockholders, convey the trust property and funds to another trustee or to a trust company, bank or corporation, subject to the terms and conditions of a contract to be entered into, which shall provide among other things, that such other trustee, trust company, bank or corporation in managing and conducting the business and affairs of this trust shall conform to this Declaration of Trust and the by-laws, present and future.

And the instrument setting forth such amendment or conveyance shall be signed and acknowledged by such trustee and recorded in the office of the County Clerk of Wichita County, Texas. Such instrument shall be conclusive of the existence of all such facts and of compliance with all prerequisites necessary to the validity of such amendment or conveyance, whether stated in such instrument or not, upon all questions as to title or affecting the rights of third persons.

Twelfth: The Trustee shall be responsible only for his own wilful and corrupt breach of trust, and not for any honest error of judgment.

Thirteenth: No assessment shall ever be made upon the stockholders, nor shall they ever be personally liable in any event, or have any rights hereunder except as provided herein.

Fourteenth: At any ..... up on the expiration of twenty years after the death of the present trustee, R. R. Robertson, the trustee shall terminate this trust by dividing the trust property and funds among the
378 stockholders, being first duly indemnified for any outstanding obligations or liability, and shall thereupon be forthwith discharged.

In Testimony whereof, the said R. R. Robertson, on behalf of himself and his successors, has hereunto set his hand in token of his acceptance of the trust herein created, and in token of his assent to and approval of the terms hereof.

R. R. ROBERTSON.

The State of Texas,
County of Wichita.

Before me the undersigned authority, a Notary Public in and for said County and State on this day personally appeared R. R. Robertson, to me well known to be the person whose name is subscribed to the above and foregoing instrument, and acknowledged to me that he executed the same for the purposes and for the consideration therein stated.

Witness my hand and official seal this the 1st day of June, A. D. 1920.

A. W. GILLILAND,
(Seal) Notary Public, Wichita County, Texas.

Filed for record Aug. 27th, 1920, at 1:50 P. M.

Recorded Sept. 1, 1920, at 2:50 P. M.

W. T. HARRIS,
Clerk County Court Wichita County, Texas.
By E. HALL,
Deputy.

379 Mr. Humphrey:

We next offer in evidence statement filed by R. R. Robertson, Trustee, on April 13, 1922, with the County Clerk, which appears at Page 747 of the transcript of evidence on the former appeal.

(Marked "Plaintiff's Exhibit No. 2").

PLAINTIFF'S EXHIBIT 2.

Statement.

State of Texas,
County of Wichita.

I, R. R. Robertson, Trustee for the Wichita Royalty Company, a common law trust acting under a Declaration of trust dated June 1st, 1920, and recorded in Volume 168, page 56-8 of the deed Records of Wichita County, Texas, do hereby certify that the following paragraphs taken from the by laws of said Wichita Royalty Company now in force and effect and which were adopted under the declaration of trust are the sole and only portions of said by-laws providing for compensation of the officers of said company, and covering the promotion thereof,

Section 3, of Article III. The Trustee shall define the duties of the officers of this trust, as well as any managers, agents, servants or other employees he may appoint, fix their compensation, and terminate their tenure office or period of service when he deems it necessary or to the best interest of this trust so to do.

380 Section 3 of Article IV. The Trustee shall receive compensation for his services commensurate with the value thereof to the stockholder of this trust, such compensation to be fixed from time to time as the stock of the company is issued and the amount thereof shall be determined by a majority of vote of the officers mentioned in Section 2, Article III hereof.

Article v. Section 1 for the purpose of further compensating the officers herein (And which shall be considered when fixing salaries) it is provided that each of said officers shall have the right to purchase stock in the company at its par value as hereinafter stated.

After 500,000 shares of the capital stock of the company have been sold and are outstanding, then said officers shall have the option of purchasing at the par value thereof and there is now allotted to them at par, stock in said company as follows:

| | |
|---|---|
| To the trustee ..... | 25,000 shares |
| To the Vice President .. | 5,000 shares |
| To the Secretary ..... | 2,500 shares |
| To the Treasurer ..... | 2,500 shares |

And after 750,000 shares of the capital stock of the company have been sold and are outstanding, then said officers shall have the option of purchasing at
381 the par value thereof, and there is now alloted to them at par, additional stock in said company as follows:

| | |
|---|---|
| To the trustee ..... | 25,000 shares |
| To the Vice President .. | 5,000 shares |
| To the Secretary ..... | 2,500 shares |
| To the Treasurer ..... | 2,500 shares |

Provided that if the officers of Secretary and Treasurer are combined in one person then said officer shall be entitled to the allotment for both Secretary and Treasurer.

Witness my hand this the 13th day of April, 1922.

R. R. ROBERTSON,
Trustee.

State of Texas,
County of Wichita.

Before me, the undersigned authority in and for Wichita County, Texas, on this day personally appeared R. R. Robertson, Trustee for the Wichita Royalty Company, and acknowledged to me that he executed the same for the purpose and consideration therein expressed, and the capacity therein stated.

Given under my hand and seal of office this the 13th day of April, 1922.

N. M. CLIFFORD,
(Seal) Notary Public, Wichita County, Texas.

Filed for Record April 13, 1922, at 10:14 AM.

Recorded April 21, 1922, at 3.7 P.M.

382 Mr. Humphrey:

Next offer in evidence the appointment of G. W. Peckham, Trustee, to take the place of R. R. Robertson, resigned. Appointment made by the District Judge, H. R. Wilson, who was at that time judge of the Thirtieth District Court of Wichita County, Texas, which appointment was filed for record on January 8, 1923, being marked "Plaintiff's Exhibit No. 3" in this cause.

PLAINTIFF'S EXHIBIT 3.

Said exhibit showing the appointment of G. W. Peckham, trustee, in accordance with the provisions of the trust agreement, as follows: In the event the trustee should die, resign, refuse or become incapable to act as trustee, the Judge of the District Court of the Thirtieth Judicial District, comprising at present the counties of

Wichita, Archer, Clay, State of Texas, shall fill the vacancy created thereby by the appointment of a person qualified under this declaration of trust to act as trustee.

Dated January 2, 1923, and signed by H. R. Wilson, Judge of the District Court for the Thirtieth Judicial District of Texas.

Acknowledged by H. R. Wilson, before R. O. Kenley, Notary Public in and for Wichita County, Texas, January 2, 1923.

Filed for record January 8, 1923, at 4:21 P. M.

Recorded January 15, 1923, at 10:48 A. M.

383 Mr. Humphrey:

We next offer in evidence acceptance of G. W. Peckham as Trustee, filed January 8, 1923, marked "Plaintiff's Exhibit No. 4."

PLAINTIFF'S EXHIBIT 4.

The acceptance of G. W. Peckham being dated January 2, 1923, acknowledged by G. W. Peckham on January 2, 1920, before Gertrude Priest Cavanagh, Notary Public in and for Wichita County, Texas.

Filed for record January 8, 1923, at 4:32 P. M.

Recorded January 15, 1923, at 11:08 A. M.

Mr. Humphrey:

Next offer in evidence the resignation of R. R. Robertson, the original trustee, marked "Plaintiff's Exhibit No. 5".

PLAINTIFF'S EXHIBIT 5.

Said resignation being in accordance with the trust agreement, and requesting H. R. Wilson, Judge of the Thirtieth Judicial District of Texas to appoint a suitable person as successor.

Dated January 2, 1923.

Acknowledged on January 2, 1923, before Eula Logan, Notary Public in and for Wichita County, Texas.

Filed for record January 8, 1923, at 4:23 P. M.

Recorded January 15, 1923, at 11:30 A. M.

384 Mr. Humphrey:

Next offer in evidence the appointment of E. E. Scannell, marked "PLAINTIFF'S EXHIEIT No. 6," and showing that G. W. Peckham the substitute trustee died on the 7th day of November, 1929, and that E. E. Scannell was duly appointed by Allen D. Montgomery, judge of the Thirtieth District Court, as substitute trustee of the Wichita Royalty Company, on the 12th day of November, 1929.

Duly acknowledged by A. D. Montgomery, on November 12, 1929, before W. H. Sanford, Notary Public in and for Wichita County, Texas.

Filed for record November 13, 1929, at 11:55 A. M.

Recorded November 15, 1929, at 1:30 P. M.

Mr. Humphrey:

Next offer in evidence the acceptance of E. E. Scannell as trustee, being marked "PLAINTIFF'S EXHIBIT No. 7" and filed for record November 15, 1929, and acknowledged before W. H. Sanford Notary Public, Wichita County,

Texas, on November 12, 1929. Recorded November 15, 1929.

Mr. Humphrey:

Next offer in evidence note of the Wichita Royalty Company due sixty days after date, dated June 6, 1930, in the sum of $22,000.00, signed by E. E. Scannell, trustee, Wichita Royalty Company, "Plaintiff's Exhibit No. 8,,.

385 PLAINTIFF'S EXHIBIT No. 8.

393.33

$22,000
22 29333
22 31998

Wichita Falls, Texas June 26, 1930.

Sixty days after date, waiving demand, protest and notice of non-payment, I, we or either of us, jointly and severally promise to pay to the City National Bank of Wichita Falls, Texas, Twenty-two thousand Dollars At the office of the City National Bank of Wichita Falls, Texas, with interest at the rate of eight percent per annum from date until paid, and ten percent additional on the principal and interest shall be added for attorney's fees if sued upon or placed in the hands of an attorney for collection, or collected through the probate Court, I, we or either of us, jointly and severally as makers, indorsers, sureties, or guarantors hereby guarantee prompt payment of the debt evidenced by this note, and waive demand, protest and notice of non-payment. Value Received.

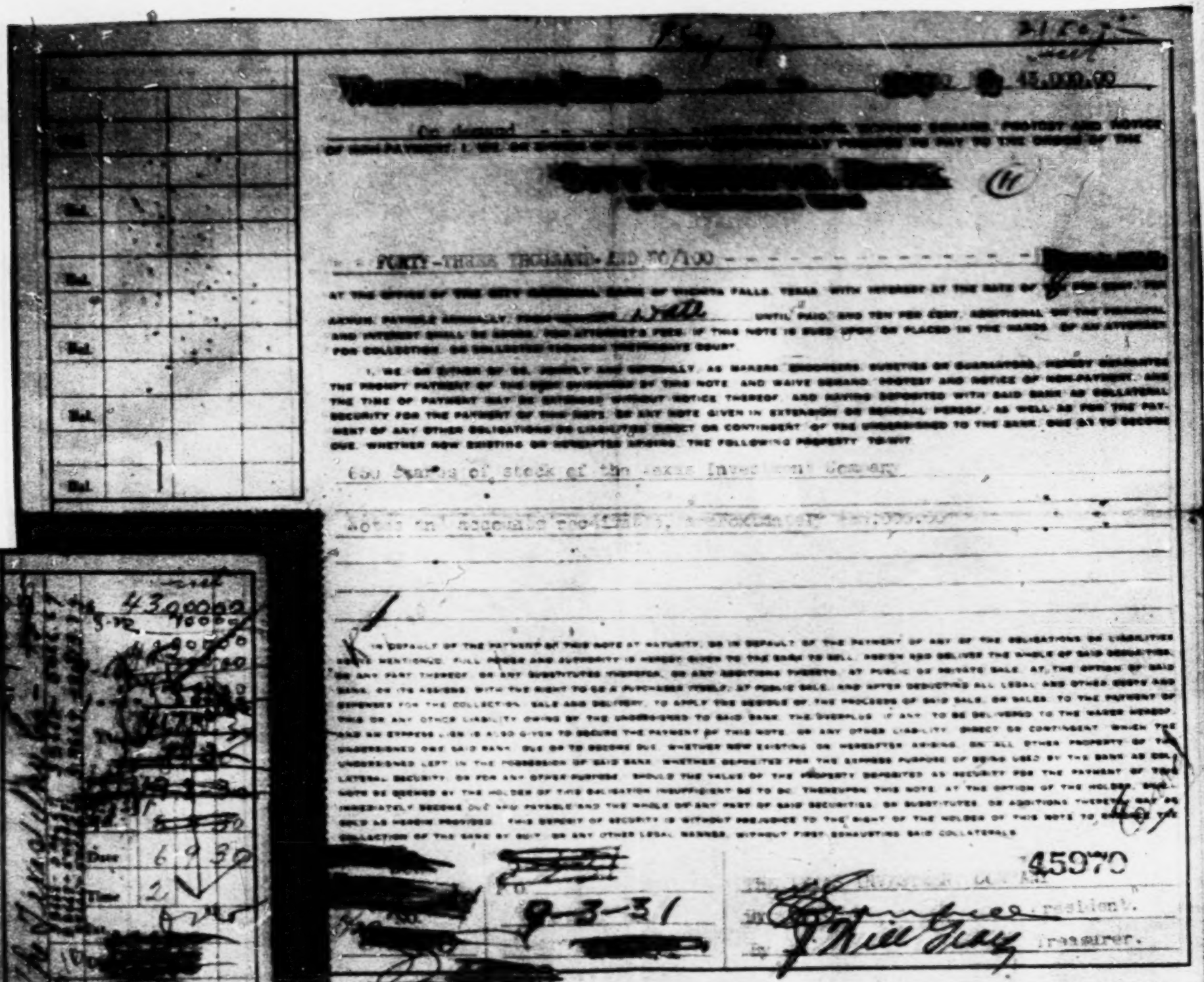
R. WICHITA ROYALTY CO.,
By E. E. SCANNELL,
Trustee.

Due 8-25-30, P. O. No. 7/15 35819, (On back thereof) Mar. 31, 1931, 26.65 Court Cost.

386 Mr. Humphrey:

We next offer in evidence note of the Texas Investment Company, payable to the order of the City National Bank of Wichita Falls, dated June 9, 1930, in the principal sum of $43,000.00, signed by the Texas Investment Company, by E. E. Scannell president, and by J. Will Gray Treasurer, with the credits appearing on the back of it, and indorsed on the back, "J. T. Harrell, Wichita Royalty Company by E. E. Scannell Trustee, and J. A. Kemp."

(Instrument marked "Plaintiff's Exhibit No. 9, reading as follows:)



$45,000.00

FORTY-THREE THOUSAND AND NO/100

AT THE OFFICE OF THE CITY NATIONAL BANK OF WICHITA FALLS, TEXAS, WITH INTEREST AT THE RATE OF

UNTIL PAID, AND TEN PER CENT, ADDITIONAL ON THE PRINCIPAL AND INTEREST SHALL BE DUE, FOR ATTORNEY'S FEES, IF THIS NOTE IS SUED UPON OR PLACED IN THE HANDS OF AN ATTORNEY FOR COLLECTION, OR COLLECTED THROUGH THE PROBATE COURT.

I, WE, OR EITHER OF US, JOINTLY AND SEVERALLY, AS MAKERS, INDORSERS, SURETIES OR GUARANTORS, HEREBY GUARANTEE THE PROMPT PAYMENT OF THE SUM EVIDENCED BY THIS NOTE, AND WAIVE DEMAND, PROTEST AND NOTICE OF NON-PAYMENT, AND THE TIME OF PAYMENT MAY BE EXTENDED WITHOUT NOTICE THEREOF, AND HAVING DEPOSITED WITH SAID BANK AS COLLATERAL SECURITY FOR THE PAYMENT OF THIS NOTE, OR ANY NOTE GIVEN IN EXTENSION OR RENEWAL HEREOF, AS WELL AS FOR THE PAYMENT OF ANY OTHER OBLIGATIONS OR LIABILITIES DIRECT OR CONTINGENT OF THE UNDERSIGNED TO THE BANK, DUE OR TO BECOME DUE, WHETHER NOW EXISTING OR HEREAFTER ARISING, THE FOLLOWING PROPERTY, TO-WIT:

(50) Shares of stock of the Texas Investment Company

Note in accounts pledged, $45,000.00

IN DEFAULT OF THE PAYMENT OF THIS NOTE AT MATURITY, OR IN DEFAULT OF THE PAYMENT OF ANY OF THE OBLIGATIONS OR LIABILITIES ABOVE MENTIONED, FULL POWER AND AUTHORITY IS HEREBY GIVEN TO THE BANK TO SELL, ASSIGN AND DELIVER THE WHOLE OF SAID COLLATERAL OR ANY PART THEREOF, OR ANY SUBSTITUTES THEREFOR, OR ANY ADDITIONS THERETO, AT PUBLIC OR PRIVATE SALE, AT THE OPTION OF SAID BANK, OR ITS ASSIGNS, WITH THE RIGHT TO BE A PURCHASER ITSELF, AT PUBLIC SALE, AND AFTER DEDUCTING ALL LEGAL AND OTHER COSTS AND EXPENSES FOR THE COLLECTION, SALE AND DELIVERY, TO APPLY THE RESIDUE OF THE PROCEEDS OF SAID SALE, OR SALES, TO THE PAYMENT OF THIS OR ANY OTHER LIABILITY OWING BY THE UNDERSIGNED TO SAID BANK, THE SURPLUS, IF ANY, TO BE DELIVERED TO THE MAKER HEREOF, AND AN EXPRESS LIEN IS ALSO GIVEN TO SECURE THE PAYMENT OF THIS NOTE, OR ANY OTHER LIABILITY, DIRECT OR CONTINGENT, WHICH THE UNDERSIGNED OWE SAID BANK, DUE OR TO BECOME DUE, WHETHER NOW EXISTING OR HEREAFTER ARISING, ON ALL OTHER PROPERTY OF THE UNDERSIGNED LEFT IN THE POSSESSION OF SAID BANK, WHETHER DEPOSITED FOR THE EXPRESS PURPOSE OF BEING USED BY THE BANK AS COLLATERAL SECURITY, OR FOR ANY OTHER PURPOSE. SHOULD THE VALUE OF THE PROPERTY DEPOSITED AS SECURITY FOR THE PAYMENT OF THIS NOTE BE DEEMED BY THE HOLDER OF THIS OBLIGATION INSUFFICIENT SO TO DO, THEREUPON THIS NOTE, AT THE OPTION OF THE HOLDER, SHALL IMMEDIATELY BECOME DUE AND PAYABLE AND THE WHOLE OF ANY PART OF SAID SECURITIES, OR SUBSTITUTES OR ADDITIONS THERETO, MAY BE SOLD AS HEREIN PROVIDED. THIS DEPOSIT OF SECURITY IS WITHOUT PREJUDICE TO THE RIGHT OF THE HOLDER OF THIS NOTE TO ENFORCE THE COLLECTION OF THE SAME BY SUIT, OR ANY OTHER LEGAL MANNER, WITHOUT FIRST EXHAUSTING SAID COLLATERALS.

45970

9-3-31

President.

Treasurer.

389 Mr. Rogers:

The Wichita Royalty Company and E. E. Scannell, trustee, object to the introduction of the note for the reason that the note is not sued upon herein, no cause of action is asserted thereon by the bank or other parties against the Wichita Royalty Company, or its trustee. The record affirmatively shows that the trustee of the trust was without power or authority to indorse the commercial paper of the third party.

Mr. Rogers:

I wish to urge the objection at this time, along with several others hereafter, which generally relate to the want of authority for this dual dealing as inadmissible evidence, the objection being that this trust could not become bound by the indorsement of the commercial paper of another; it is beyond the scope of the authority of the trust to indorse that note.

(Which objection was by the Court overruled, to which the defendant then and there excepted).

Mr. Humphrey:

I next offer, accompanying the note, the pledge agreement of the Texas Investment Company, dated the 24th day of January, 1930, signed by the Texas Investment Company of Wichita Falls, by E. E. Scannell, President; whereby there was pledged as security for the payment of this note, certain corporate stocks, vendor lien notes, contracts, and other collateral.

390 PLAINTIFF'S EXHIBIT 10.

State of Texas,
County of Wichita.

Having executed its note to The City National Bank of Wichita Falls, Texas, and having deposited and pledged with the said bank as collateral for the prompt payment

at maturity of any and all notes now executed, or hereafter to be executed, together with any and all other liability or liabilities of the undersigned as prin-
391 cipal debtor or otherwise, due or to become due, or of any that may hereafter be contracted with the said bank, or its assigns, the following collateral, to-wit:

Certificates Nos. 3, 4 and 5 for Two Hundred Fifty shares of the capital stock of The Texas Investment Company of Wichita Falls, par val. $25,000.00. All vendor lien notes and contracts for the sale of lots in Marlborough Addition approximating $29,000.00.

Contracts between G. W. Peckham, J. A. Kemp, J. T. Harrell and the City of Wichita Falls providing for the purchase by the City of Wichita Falls of the sewer and water lines in Marlborough Addition, approximating $16,500.00, the market value of which is estimated by the undersigned now at $..... . It Is Hereby Agreed; That The City National Bank, its successors or assigns, or

The holder of said note shall not be liable for failure to collect said collaterals, or for failure to present or protest same, or to give notice or use thereon, and if this note, or any other liability of the undersigned be not paid at maturity, is hereby authorized, without notice to the undersigned, to sell either at public sale or private sale, without advertising same or giving any notice thereof, through a broker or otherwise, the whole or any part of said collaterals, with the right of becoming the purchaser and absolute owner thereof at any such sale, and when said collaterals are sold, to transfer, in-
392 dorse, assign and deliver up the same, and after deducting all costs, attorneys fees and expenses of collection, sale and delivery, including a commission of two and one-half percent on the gross amount of the proceeds of such sale, to apply the residue of such proceeds to pay any or all of said liabilities as said holder

shall deem proper, returning the surplus, if any, to the undersigned. If the net proceeds from the sale of said collaterals shall not be sufficient to pay all the liabilities secured by said collaterals, we, and each of us, respectively, agree to pay upon demand to the holder thereof the balance due upon such of them as are liabilities of each of us, respectively.

The said holder hereof shall be entitled to collect any interest accruing upon, or payments maturing on the principal, of said collateral, and any dividends, whether cash, stock, liquidating or any other kind, upon any of said collaterals, and any and all other interests, income, profits, moneys, or other things of value, whatsoever, accruing or becoming due upon said collaterals, and may sell all rights to subscribe for stock or other things accruing upon said collaterals, in the manner hereinabove provided for sales of collaterals, and shall apply the proceeds as similarly provided above.

As often as the market price of said collaterals (or in the event of no market price, the actual value thereof) shall, before the maturity of our note or any other liability of the undersigned to the holder thereof, fall
393 below the present market value of said collaterals (or in the event of no market value, the actual value thereof, the determination of which shall be vested solely in the holder of the notes secured hereby), the undersigned on demand will within twenty-four hours thereafter deposit with the holder additional collaterals to be approved by said holder, sufficient to cover the amount of such depreciation in value, and in default thereof our note and any other liability of the undersigned to the holder thereof shall, at the election of the holder thereof, become instantly due and payable, and all the foregoing rights in regard to said collaterals shall at once be exercisable. In case of any exchange or addition to the collaterals above named, the new collaterals shall be sub-

ject to this agreement the same as if part of the original collaterals.

All calls, assessments, charges and taxes on said collaterals shall be paid by the undersigned, and on the failure after ten days' written notice to pay the same, the holder may declare all of said liabilities secured hereunder immediately due and payable.

No additional security, personal or collateral, taken for payment of our note or any other liability of the undersigned, shall in any manner affect the security or any other liability of any other person liable for the payment of our note or such other liability. Said holder shall be entitled, as further security for the payment of
394 our note and any other liability of the undersigned to a first lien upon any drafts, bills of exchange or bills receivable held for collection or safekeeping for the account of the undersigned, and also upon any and all other property left in possession of the holder hereof and also upon any money found on deposit with said holder to the credit of the undersigned, and may retain and apply said money, securities and property or proceeds of such collections to the payment of our note and other liabilities of the undersigned.

Witness its hand at Wichita Falls, Texas, this 24th day of January, A. D. 1930.

TEXAS INVESTMENT COMPANY OF WICHITA FALLS,
By E. E. SCANNELL,
President.

(On back thereof) Collateral to Secure Obligation of .....

Mr. Rogers:

The same parties make the same objection to the introduction of the pledge agreement that has been made

to the introduction of the note, the security for which the agreement was apparently made. No predicate being laid for the introduction of either the note or the pledge agreement.

(Which objection was by the Court overruled, to which the defendant then and there excepted.)

395 Mr. Humphrey:

We next offer in evidence certificate of stock, one hundred and twenty-five shares of the Texas Investment Company, being Certificate number 4, showing to have been transferred from the estate of G. W. Peckham, Administrator, to the E. E. Scannell, Trustee, for the Wichita Royalty Company, Being Certificate No. 4, signed by E. E. Scannell as President and by A. B. Duncan, Secretary, and dated the 24th of January, 1930, indorsed on the back E. E. Scannell, Trustee for the Wichita Royalty Company. Also the stub.

(Said certificate being marked "PLAINTIFF'S EXHIBIT No. 11" and being the usual and ordinary form wherein E. E. Scannell was issued one hundred and twenty-five shares of capital stock of the Texas Investment Company, which stock was duly issued and transferred as a pledge to the City National Bank).

PLAINTIFF'S EXHIBIT 11a being the stub, shows for one hundred and twenty-five shares to E. E. Scannell, Trustee for Wichita Royalty Company, being certificate No. 4, dated January 24, 1930, transferred from W. H. Peckham, Administrator for G. W. Peckham estate. Dated January 24, 1930. Showing receipt of certificate No. 4 for one hundred and twenty-five shares, dated the 24th of January, 1930, signed by E. E. Scannell, trustee Wichita Royalty Company. Also showing $2.50 documentary stamps.

396 Mr. Humphrey:

We next offer in evidence another certificate, No. 11, for Three hundred and twenty-five shares, issued to E. E. Scannell, trustee for Wichita Royalty Company, dated March 17, 1930, signed by E. E. Scannell as president, and indorsed by E. E. Scannell as trustee, on the back. Also the stub.

(Said instruments being marked "PLAINTIFF'S EXHIBIT 12" and "12a").

Plaintiff's Exhibit 12 being a certificate in the usual and ordinary form.

Plaintiff's Exhibit 12a being the stub, to certificate No. 11. Has written on it, "No tax due". For three hundred and twenty-five shares issued to E. E. Scannell, trustee Wichita Royalty Company, dated March 17, 1930, transferred from E. E. Scannell, trustee.

Mr. Humphrey:

We next offer in evidence certificate No. 1, showing the cancellation marks thereon, issued by E. E. Scannell, trustee on the 24th of January, 1930, as President of the Company to W. H. Peckham, the administrator of the estate of G. W. Peckham, 125 shares. The transfer thereon by George W. Peckham, by W. H. Peckham, administrator to E. E. Scannell, trustee for the Wichita Royalty Company, which transfer is dated January 24, 1930. Also offer the stub.

(Said instruments being marked "PLAINTIFF'S EXHIBITS 13 and 13a"):

The certificate being in the usual and ordinary form. Dated January 24, 1930. Signed by A. B. Duncan, Secretary, and E. E. Scannell, President.

397 Plaintiff's Exhibit 13a being stub, to certificate 1, for 125 shares issued to G. W. Peckham, dated January 24, 1930. Showing $6.25 in documentary stamps.

## PLAINTIFF'S EXHIBIT 14.

Balance Sheet Wichita Royalty Company, Wichita Falls, Texas, at the Close of Business November 30, 1924.

### Liabilities.

| | | | |
|---|---|---|---|
| Contracts Payable— | | | |
| For purchase of royalties..... | | $6,250.00 | |
| Less Escrow Payments applicable ..... | | 5,847.89 | $402.11 |
| Nominal— | | | |
| Capital Stock Authorized .... | $1,000,000.00 | | |
| Less Unissued ... | 185,085.00 | $814,915.00 | |
| Surplus November 30, 1924— | | | |
| Per Company Books ..... | | 48,441.61 | 863,356.61 |
| | | | $863,758.72 |

### Assets.

| | | | |
|---|---|---|---|
| Cash on Deposit— | | | |
| Security National Bank ..... | $137.61 | | |
| City National Bank | 490.87 | $ 628.48 | |
| Accounts Receivable— | | | |
| For sale of Oil and Gas..... | | $4,340.67 | |

| | | | |
|---|---|---|---|
| Notes Receivable— | | | |
| For sale of Automobile ..... | 225.00 | | |
| For sale of Stock... | 1,587.90 | 1,812.90 | $6,782.05 |
| Producing Royalties Owned— | | | |
| Per Books and Engineer's Valuation Reports ..... | | | 854,869.42 |
| Permanent— | | | |
| Automobile less depreciation.. | | 1,080.00 | |
| Office Furniture less depreciation ..... | | 1,027.25 | 2,107.25 |
| | | | $863,758.72 |

399 Mr. Rogers:

The Wichita Royalty Company and E. E. Scannell, as Trustee, object to the introduction of the Certificates of stock in the corporation, Texas Investment Company and the stubs attached to such certificates, for the reason that the declaration of trust affirmatively shows that the issuance to the plaintiff by the trustee of certificates of stock in a corporation is beyond his authority as trustee, to bind the trust estate. It is not shown that the corporation was even engaged in the oil and gas business, to which alone the trustee was authorized to deal. No matter connected with the issuance of the certificates that bind the trust.

Mr. Rogers:

We object to the introduction of the balance sheets, being Exhibit 14, for the reason that their authority has not been estimated.

Mr. Humphrey:

They are parts of the evidence we offered at the other trial, they came from your custody.

Mr. Rogers:
No proper predicate has been laid for their introduction.

Mr. Humphrey:
I will have to prove that up later.

(Which objection was by the Court overruled, to which the defendant then and there excepted.)

Mr. Humphrey:
Next offer in evidence balance sheet of the Wichita Royalty Company at the close of business April 30, 1928.

(Said instrument marked "Plaintiff's Exhibit 15" and reading as follows:)

400 PLAINTIFF'S EXHIBIT 15.

Balance Sheet Wichita Royalty Company, Wichita Falls, Texas, At the Close of Business April 30, 1928.

Assets.

| | | |
|---|---|---|
| Cash In Banks— | | |
| City National Bank | $13.45 | |
| Security National Bank | 80.67 | $ 94.12 |
| Accounts Receivable— | | |
| For estimated oil runs accrued, but not yet paid for | | 1,036.74 |
| Property Account— | | |
| Per Books and Engineer's Valuation Reports | | 987,460.94 |
| Permanent— | | |
| Office Furniture, less depreciation | | 794.81 |
| | | $989,386.61 |

Liabilities.

| | | |
|---|---|---|
| Notes Payable— | | |
| Per Company Books | | $ 51,095.68 |
| Reserve— | | |
| For Depletion of Royalties | | 539,039.03 |
| Nominal— | | |
| Capital Stock Authorized | $1,000,000.00 | |
| Less Unissued | 185,085.00 | 814,915.00 |
| Surplus— | | |
| April 30, 1928 | (—) | 415,663.10 |
| | | $989,386.61 |

Mr. Humphrey:
I will have to prove those up later on in the file, they came from your custody, and I think Mr. Scannell said they were correct.

Mr. Humphrey:
Now, give me the charter of the Texas Investment Company and the amendments and by-laws.

Mr. Humphrey:
First offer in evidence the by-laws of the Texas Investment Company, dated 24th day of January, 1930, adopted by J. T. Harrell, E. E. Scannell, and J. Will Gray.

(Marked "Plaintiff's Exhibit 16" and reading as follows:)

PLAINTIFF'S EXHIBIT 16.

The Texas Investment Company of Wichita Falls.

By-Laws.

402 Offices.

1. The principal office of this company is in the city of Wichita Falls, Wichita County, and State of Texas.

2. This corporation may have an office in other places in the State as designated by the Board of Directors from time to time.

Seal.

3. The corporate seal shall have inscribed thereon the name of the corporation, the year of its organization, and the words, "Corporate Seal, State of Texas." Seal may be used by causing it, or a facsimile thereof, to be impressed or affixed or reproduced, or otherwise.

Stockholders' Meetings.

4. Stockholders' meetings shall be held at the principal office of said corporation in Wichita Falls, Texas.

5. An annual meeting of the stockholders, after the first meeting of the incorporators, shall be held on the first Tuesday in January of each year, beginning the first Tuesday in January, A. D. 1931, if not a legal holiday, and if a legal holiday, then on the next secular day following, at three p. m. on said day, when such stockholders shall elect by plurality vote by ballot a Board of Directors for the ensuing year, and transact such other business as may properly be brought before the meeting.

6. The holders of a majority of the stock issued and outstanding, and entitled to vote thereat, present in person or represented by proxy, shall be requisite
403 and shall constitute a quorum for the transaction of all business at all meetings of the stockholders; but if a majority of such stockholders be not present, the stockholders present in person or by proxy shall have power to adjourn the meeting from time to time without notice other than announcement at the meeting until the requisite amount of voting stock shall be present, and at such adjourned meeting at which a requisite amount of voting stock shall be represented any business may be lawfully transacted which might have been transacted at the meeting as originally notified.

7. At any meeting of the stockholders each stockholder having the right to vote shall be entitled to vote in person, or by proxy, appointed by an instrument in writing signed and subscribed by such stockholder and bearing a date not more than one year prior to said meeting. Each stockholder shall have one vote for each share of stock having voting power and registered in his name on the books of the corporation, except the books of the corporation shall be closed ten days prior to the date of said annual meeting of the stockholders, and no certificate of stock transferred within said ten days shall be entitled to vote for the election of Directors. Written notice of the annual meeting shall be mailed to each stockholder entitled to vote thereat, at his last postoffice address at least ten days prior to the date of said meeting, such notice to be by mail by the secretary or assistant secretary.

404 8. A complete list of the stockholders entitled to vote at the ensuing election, arranged in alphabetical order, with the residence of each and the number of shares held by each, shall be prepared by the secretary and filed in the office of said corporation prior to the date of said meeting, and shall be open to inspection by any stockholder.

9. Special meetings of the stockholders for any purpose or purposes may be called by the president or by the president and secretary, or other officer, at the request of a majority of the Board of Directors, or at the request in writing of a majority of the stockholders. Such requests shall state the purpose or purposes of such special meeting.

10. Business transacted at all special meetings shall be confined to the objects stated in the call.

11. Written notice of a special meeting of the stockholders stating the time, place and object thereof shall be mailed postage prepaid to each stockholder at least five days before the date of said meeting.

Directors.

12. Property and business of the corporation shall be managed by a Board of Directors, three in number, who shall each be a stockholder, and who shall be elected at the annual meeting of the stockholders, except the First Board of Directors, who are J. T. Harrell, E. E. Scannell and J. Will Gray; and each Director shall serve until his successor is elected and shall qualify.

405 13. The Directors shall hold their meetings at the principal office of said corporation and there keep the books and records of said corporation.

14. If the office of any Director, or Directors, becomes vacant the remaining Directors shall choose a successor or successors, who shall hold office until the next regular annual meeting of the stockholders, and until a successor or successors have been duly elected.

15. The Directors shall receive no compensation for their services as such.

Meetings of the Board.

16. The Board of Directors shall meet at such time and place as may be selected by them, and a majority of the Board shall constitute a quorum; but said Directors may provide for regular or special meetings, and no notice of a regular meeting shall be required after the same has been fixed by the Board of Directors.

17. Special meetings may be had upon the call of the president or any two directors, and two days notice shall be given to the Directors of such special meeting, either personally, by telephone or mail.

18. At all meetings of the Board of Directors a majority of the Directors shall be necessary to constitute a quorum, and the act of a majority shall be sufficient for the transaction of any business.

406 Officers.

19. The officers of the corporation shall be chosen by the Directors and shall be a president, vice-president, secretary and treasurer, although the secretary and treasurer may be the same person. There may also be an assistant secretary and assistant treasurer. The officers need not be stockholders, except the president and vice-president.

20. The Board of Directors shall at its first meeting choose such officers. The Board of Directors may appoint such other officers or agents as may be necessary or proper for the purpose of conducting the business of the corporation, and the salaries of all officers and agents shall be fixed by the Board of Directors.

21. The officers of the corporation shall hold office until their successors are chosen and qualify in their

stead, and any officer elected or appointed by the Board of Directors may be removed at any time by a majority vote of the Board of Directors.

President.

22. The president shall be the chief executive officer of the corporation. He shall preside at all meetings of the stockholders and Directors and shall have general and active management of the business of the corporation. He shall execute bonds, mortgages, deeds and conveyances requiring a seal, under the seal of the corporation, and shall have general powers and duties of
407 supervision and management usually vested in such officer.

Vice-President.

23. The vice-president shall, in the absence or disability of the president, perform his duties and exercise all of the powers of the president.

Secretary.

24. The secretary shall attend all the sessions of the Board of Directors, all meetings of the stockholders, record all votes and minutes of all proceedings in a proper book to be kept for that purpose. He shall give, or cause to be given, notice of all meetings to the stockholders and to the Directors, and shall perform such other duties as may be prescribed by the Board of Directors, or the president, under whose supervision he shall act. He shall keep the seal of the corporation and affix when authorized by the Board of Directors, and when so affixed it shall be attested by his signature, or the signature of the treasurer. An assistant secretary may be selected who shall act for the secretary in all matters in his absence, or by reason of the disability of said secretary.

## Treasurer.

25. The treasurer shall have the custody of the corporate funds and securities, and shall keep a full and accurate record of the receipts and disbursements in books belonging to the corporation. He shall deposit all monies and other valuable effects in the name and to the credit of the corporation in such depository as
408 may be selected by the corporation. He shall disburse the funds of the corporation as may be ordered by the Board, and shall render to the president and directors, at regular meetings of the Board of Directors, or whenever they require it, an account of all his transactions. He may be required to give a bond for the faithful performance of his services.

## Certificates of Stock.

26. Certificates of stock of the corporation shall be numbered and entered in the books of the corporation as they are issued, and shall show the holder's name, the number of shares, the par value, and shall be signed by the president or vice-president, together with the treasurer or secretary.

## Transfers of Stock.

27. Transfers of stock shall be made on the books of the corporation only by the person named in the certificate, or by attorney lawfully appointed in writing, and upon surrender of the certificate therefor the corporation shall be entitled to treat the holder of any share or shares of stock as the legal holder thereof, and accordingly shall not be bound to organize any equitable claim, or other claim to, or interest in, such share on the part of any other person.

28. Any person claiming a certificate of stock to be lost or destroyed shall be required to make an affidavit

of such fact, and before a duplicate can be issued shall be required to give an indemnity bond in such form and with such sureties as may be required by the Board of
409 Directors, in an amount to be fixed by the Board of Directors.

Checks.

29. Checks or demands for money and notes of the corporation shall be signed by such officer or officers, or agents, as may be designated from time to time by the Board of Directors.

Fiscal Year.

30. The fiscal year shall be the calendar year.

Dividends.

31. Dividends on the capital stock of the corporation may be declared by the Board of Directors at any regular or special meeting of said Board, and may be paid in cash, in property, or in shares of the capital stock.

32. The Board of Directors shall present at each annual meeting, and when called for by the vote of the stockholders at any special meeting of the stockholders, a statement of the business and condition of the corporation.

Notices.

33. Whenever, under any of the provisions of these by-laws, notice is required to be given to any director, officer, or stockholder, it shall not be construed to mean personal notice, but such notice may be given in writing by mail, by depositing the same in the postoffice or letter

box in a post-paid sealed envelope, addressed to such stockholder, officer or director at such address as appears on the books of the corporation, or in default of other address, at his last known postoffice address, and when such notice is properly mailed it shall be deemed given at the time when mailed.

34. Any stockholder, director or officer may waive any notice required to be given under these by-laws.

Amendments.

35. These by-laws may be altered or amended or repealed by the affirmative vote of a majority of the stock issued and outstanding, and entitled to vote, at any regular meeting of the stockholders, or at any special meeting called for such purpose, or by the affirmative vote of the majority of the Board of Directors at any regular meeting, or any special meeting, notice of which special meeting shall contain the proposed alteration, amendment, etc.

Witness our hands at Wichita Falls, Texas, this 24th day of January A. D., 1930.

(Signed) J. T. HARRELL,
E. E. SCANNELL,
J. WILL GRAY.

Mr. Humphrey:

Next offer in evidence the charter of the Texas Investment Company, signed on the 28th of August, 1929, by J. Will Gray, J. T. Harrell, George W. Peckham, it appears at page 776 of the transcript of the evidence.

411 (Said instrument marked "Plaintiff's Exhibit 17" and reading as follows:)

PLAINTIFF'S EXHIBIT 17.

Charter of a Domestic Corporation.

The State of Texas,
County of Wichita.

Know All Men By These Presents: That we, George W. Peckham, J. T. Harrell and J. Will Gray, all citizens of the State of Texas, under the provisions of the Revised Statutes of the State of Texas, do hereby form and incorporate ourselves into a voluntary association, for the purpose of the erection or repair of any building or improvement, and the accumulation and loaning of money for said purposes, and for the purchase, sale and subdivision of real property in towns, cities and villages, and their suburbs not extending more than two miles beyond their limits and for the accumulation and loaning of money for that purpose, and to that end we hereby adopt and subscribe the following:

Charter.

Article I.

The name of this corporation is Texas Investment Company of Wichita Falls and by which name it shall contract and be contracted with, sue and be sued, and transact all of its business.

412 Article II.

The purpose of this corporation is the erection or repair of any building or improvement, and the accumulation and loaning of money for said purposes, and for the purchase, sale and subdivision of real property in towns,

cities and villages, and their suburbs not extending more than two miles beyond their limits and for the accumulation and loaning of money for that purpose.

Article III.

The principal office and place of business of this corporation shall be Wichita Falls in Wichita County, Texas, and the business of the corporation may be transacted at such other place or places within said state as may be designated in its By-Laws.

Article IV.

The said corporation shall exist for the term of Ten (10) Years.

Article V.

The number of directors of said corporation shall be three, unless increased by a majority vote of the stockholders, and the following named stockholders are hereby declared to be the directors for the first year, to-wit:

Geo. W. Peckham, 3200 Peckham Street, Wichita Falls, Texas.

J. T. Harrell, 1615 Buchanan Street, Wichita Falls, Texas.

413 J. Will Gray, 1215 Taylor Street, Wichita Falls, Texas.

Article VI.

The capital stock of this corporation shall be Twenty-Five Thousand ($25,000.00) Dollars, to be divided into two hundred fifty (250) shares of One Hundred ($100.00) Dollars each, all of which capital stock has been subscribed and paid in as per affidavit attached hereto.

In Testimony Whereof we hereunto sign our names this 28th day of August, A. D., 1921.

J. WILL GRAY,
J. T. HARRELL.
GEO. W. PECKHAM.

The State of Texas,
County of Wichita.

Before me, the undersigned authority, on this day personally appeared Geo. W. Peckham, J. T. Harrell and J. Will Gray, known to me to be the persons whose names are subscribed to the foregoing instrument, and severally acknowledged to me that they executed the same for the purposes and consideration therein expressed.

In testimony whereof, I hereunto subscribe my name and affix the seal of my office, this 28th day of August, A. D. 1929.

A. B. DUNCAN,
Notary Public in and for Wichita County, Texas.

414 No. S S 114. Charter of Texas Investment Company of Wichita Falls, Wichita Falls, Texas.

Capital Stock $25,000.00. Filing fee $70.00. Franchise 5-1-30 $8.36. Remarks: 10 Years. 250 Shares, $100.00 each.

All Paid.

Filed in the Office of the Secretary of State, this 30th day of Aug., 1929.

JANE Y. McCALLUM,
Secretary of State.

#19720.

The State of Texas,
Department of State.

I, Jane Y. McCallum, Secretary of State, of the State of Texas, do hereby certify that the foregoing is a true and correct copy of the charter of the Texas Investment Company, of Wichita Falls, with the indorsement
415 thereon, as now appears of record in this department.

In testimony whereof, I have hereunto signed my name officially and caused to be impressed hereon the Seal of State at my office in the City of Austin, this 3 day of Sept. A. D., 1929.

JANE Y. McCALLUM,
Secretary of State.

(Seal, the State of Texas.)

Mr. Humphrey:

Next offer in evidence the amendment of the Texas Investment Company, to the charter, being PLAINTIFF'S EXHIBIT No. 18.

Said exhibit being dated January 24, 1930, signed by J. T. Harrell, J. Will Gray, E. E. Scannell, wherein the corporate stock was increased from $25,000.00 to $75,000.00, and the number of shares increased from 250 to 750 of the par value of $100.00 each.

Acknowledgment of J. T. Harrell, J. Will Gray and E. E. Scannell, being taken on January 24, 1930, before A. B. Duncan, Notary Public in and for Wichita County, Texas.

416 Mr. Humphrey:

Next offer in evidence the minutes of the first meeting of the incorporators, held at the office of the company on the 24th day of January, 1930, at 3:00 o'clock P. M., together with the notice and waiver. It appears to

be signed by J. T. Harrell, Chairman, and J. Will Gray, Secretary.

(Instrument marked "Plaintiff's Exhibit 19" and reading as follows:)

417 PLAINTIFF'S EXHIBIT 19.

Texas Investment Company of Wichita Falls.

Minutes of First Meeting of Incorporators.

The first meeting of the incorporators of Texas Investment Company of Wichita Falls, was held on the 24th day of January, 1930, at 3:00 o'clock P. M., at its principal office in the city of Wichita Falls, Texas, pursuant to a written waiver signed by said incorporators, except George W. Peckham, who had, subsequent to the filing of the charter, departed this life, but whose estate was represented by W. H. Peckham, his duly and legally appointed administrator, which waiver of notice is as follows:

Texas Investment Company.

Waiver of Notice.

Meeting of Incorporators.

We, the undersigned, J. T. Harrell, J. Will Gray and W. H. Peckham, acting as administrator of the estate of George W. Peckham, deceased, the incorporators of Texas Investment Company of Wichita Falls, organized under the laws of the State of Texas, do hereby waive notice of the time, place and purpose of the first meeting of the said corporation and do fix the 24th day of January, 1930, at 3:00 o'clock P. M., as the time, and the office
418 of J. T. Harrell in the City National Bank Building as the principal office of said corporation and place of said meeting.

And we hereby waive all the requirements of the statutes of the State of Texas, both as to the notice of this meeting and the publication thereof; and we do consent to the transaction of such business as may come before said meeting.

Dated, 24th day of January, 1930.

(Signed) J. T. HARRELL,
J. WILL GRAY,
W. H. PECKHAM.

The following incorporators being the sole stockholders of said corporation were present in person: J. T. Harrell, J. Will Gray, W. H. Peckham, Administrator of the Estate of George W. Peckham, deceased, being all the incorporators and all the stockholders of said company.

Upon motion, J. T. Harrell was chosen as chairman, and J. Will Gray, as Secretary of said meeting.

The chairman reported that the certificate of incorporation was duly filed in the office of the Secretary of State of the State of Texas, on the 30th day of August, 1929, and the Secretary was instructed to cause a copy of said certificate of incorporation to be inserted in the
419 Minute Book.

The secretary thereupon presented a form of by-laws for the regulation of the affairs of the corporation, which were read, section by section.

Upon motion duly made, seconded and carried it was

Resolved, that the by-laws submitted to and read at this meeting be and the same are hereby adopted as the by-laws of this corporation, that the secretary be and he is hereby instructed to cause the same to be inserted in the Minute Book immediately following the copy of the

certificate of incorporation which certificate of incorporation and by-laws precede the Minutes of this first meeting.

It was thereupon stated that the shares of stock subscribed and paid for by George W. Peckham was held by him in trust for the Wichita Royalty Company, a trust estate, whose sole trustee was E. E. Scannell.

Thereupon, the following resolution was offered, seconded and unanimously adopted:

Be It Resolved that the capital stock subscribed and paid for by George W. Peckham in this corporation, which stock is 125 shares of the par value of $100.00 each, be issued and delivered to W. H. Peckham, administrator of the Estate of George W. Peckham, deceased, and be transferred thereafter to E. E. Scannell, sole trustee of Wichita Royalty Company.

420 It appearing that all the stock in said corporation which was subscribed and paid for is represented at this meeting, and since the date of the incorporation, George W. Peckham has departed this life and that he was named and designated in Articles of Incorporation as one of the Directors of said corporation, the Chairman thereupon announced that it was necessary to elect another Director, and upon motion being made by J. Will Gray, and seconded by W. H. Peckham, Administrator of the Estate of George W. Peckham, deceased, E. E. Scannell was unanimously elected as Director of said corporation instead of George W. Peckham, deceased.

It appearing that the Stockholders had unanimously agreed that the capital stock of said corporation should be increased from $25,000.00 to $75,000.00, the question of such increase was placed before the meeting, and upon motion of J. Will Gray, seconded by E. E. Scannell, it was unanimously

Resolved, that the capital stock of this corporation be increased from 250 shares of the par value of $100.00 each to 750 shares of the par value of $100.00 each, and that the present Stockholders be given the privilege of subscribing for said increased stock ratably to the amount of the original stock they now hold, and that upon the payment in full of said increased capital stock the Directors are authorized and directed to certify the same to the Secretary of the State of Texas, and file an amendment to the charter of this corporation as required by
421 the laws of the State of Texas.

Thereupon, no further business coming before said meeting, it was, upon motion duly made and seconded, adjourned.

(Signed) J. T. HARRELL,
Chairman,
J. WILL GRAY,
Secretary.

422 Mr. Rogers:

The Wichita Royalty Company and E. E. Scannell, its trustee, object to the introduction of the charter of the Texas Investment Company, a corporation, and to all amendments thereof, and to all by-laws, minutes, resolutions and waivers or other transactions had, by such corporation, or by the trustee of the Wichita Royalty Company in its relation thereto, in the issuance of stock thereof, because it affirmatively appears that the authority of the trustee was limited solely and only to the purchase and sale of oil and gas properties, and the charter and the amendments of the corporation show the purpose of the corporation to be foreign to the oil business; and a declaration of trust constituting, as it does, the charter of the powers of the trustee, excluded the power to subscribe to stock, in or participate as a shareholder or director in any corporation of any kind, and certainly forbade his dealing with such a corporation in such capacities in the corporation itself. It was deliver-

ing a charter for the purpose of dealing in a subject matter foreign to the powers of the trust, and the purposes for which it was organized, the trustees not being authorized to change the purposes of the trust, in the purposes now sought to be shown, as binding upon the trust estate, being foreign to any authority ever delegated to the trustee, and it not being shown that the stockholders at any time knew or ratified, adopted, or confirmed, or otherwise acquiesced in the trustee's dealing with such corporations.

423 This objection is made to apply to those instruments which have heretofore been offered, and all instruments that may hereafter be offered, in connection therewith, or relating thereto.

(Which objection was by the Court overruled, to which the defendant then and there excepted.)

Mr. Humphrey:

Next offer in evidence a Waiver of Notice of meeting of the Directors, of the Texas Investment Company, signed on the 24th day of January, 1930, same being signed by J. T. Harrell, J. Will Gray, and E. E. Scannell, together with a copy of the minutes of the board of directors held on the 24th day of January, 1930, pursuant to said meeting.

PLAINTIFF'S EXHIBIT 20.

Texas Investment Company of Wichita Falls.

Waiver of Notice of Meeting of Directors.

We, the undersigned, being the present Board of Directors of Texas Investment Company of Wichita
424 Falls, hereby waive notice of the time, place and purpose of the first meeting of the Directors of

said corporation, to be held at the office of said corporation in the city of Wichita Falls, Texas, on the 24th day of January, A. D., 1930, immediately following the first meeting of the stockholders of said corporation. The purpose of said meeting being the election of officers of said corporation, and the transaction of such other business as may properly come before said meeting.

Witness our hands this 24th day of January, 1930.

(Signed) J. T. HARRELL,
J. WILL GRAY,
E. E. SCANNELL.

Texas Investment Company of Wichita Falls.

Minutes of the Meeting of the Board of Directors.

Held at the office of said corporation, in the city of Wichita Falls, Texas, on the 24th day of January, A. D., 1930, immediately following the adjournment of the first meeting of the stockholders of said corporation, said meeting being held pursuant to written waiver signed by said directors.

Mr. J. T. Harrell acted as Chairman of said meeting and Mr. J. Will Gray acted as Secretary.

The Chairman then stated that the election of officers of said corporation was in order, and the following nominations were made:

425

E. E. Scannell, President.
J. T. Harrell, Vice-President.
J. Will Gray, Treasurer.
A. B. Duncan, Secretary.

Upon a vote being taken it was found that all of the Directors voted for the officers above named; the term of their office to be for one year from this date and until their successors are elected and qualified.

Upon motion, duly made and carried, the salary of the Secretary was fixed at the sum of $25.00 per month, payable at the end of each month out of the funds of said corporation, and the President or Vice-President and Treasurer were authorized to draw on the funds of said corporation for said salary.

The proper officers were further authorized and directed to draw on the funds of the corporation to pay the expenses incident to the incorporation.

No further business coming before said meeting, it was, upon motion duly made and seconded, adjourned.

(Signed) J. T. HARRELL,
Chairman,
J. WILL GRAY,
Secretary.

426 Mr. Humphrey:

Next offer in evidence amendment increasing the capital stock of the Texas Investment Company, dated 24th day of January, 1930, signed by J. T. Harrell and J. Will Gray, and E. E. Scannell, acknowledged before A. B. Duncan, together with a certified copy of the Secretory of State accompanying the same.

(Marked "PLAINTIFF'S EXHIBIT 21")

Acknowledged before A. B. Duncan, Notary Public in and for Wichita County, Texas, on January 24, 1930. Increasing the capital stock from $25,000.00 to $75.000.00 and increasing the number of shares from 250 to 750, of the par value of $100.00 each. Filing fee $90.00.

Bearing the certificate of the Secretary of State, of the State of Texas, dated February 7, 1930.

Mr. Humphrey:

We next offer in evidence waiver of notice of a special meeting of the stockholders of the Texas Investment Company, being PLAINTIFF'S EXHIBIT 22.

Dated March 7, 1930, signed by J. T. Harrell, J. Will Gray and E. E. Scannell. The purpose of said meeting being to determine the advisability of decreasing the capital stock of said corporation from 750 shares of par value of $100.00 each to six hundred and fifty shares of the same par value.

427 Texas Investment Company of Wichita Falls.

Special Meeting of the Stockholders.

Special meeting of the stockholders of Texas Investment Company of Wichita Falls, held at the office of said corporation, on the 17th day of March, A. D., 1930, pursuant to waiver of notice thereof, executed by all of the stockholders.

Mr. E. E. Scannell acted as Chairman of said meeting and Mr. A. B. Duncan acted as Secretary.

The Chairman stated to the meeting that it would be advisable, and to the best interest of the corporation, to reduce the capital stock of the corporation, from $75,000.00, being 750 shares of the par value of $100.00 each, to $65,000.00 of 650 shares of the par value of $100.00 each.

Thereupon, on motion of Mr. J. Will Gray, seconded by Mr. J. T. Harrell, it was unanimously

Resolved that the capital stock of Texas Investment Company of Wichita Falls, be reduced from $75,000.00, being 750 shares of the par value of $100.00 each to $65,000.00, of 650 shares of the par value of $100.00 each, and that the shares of stock held by each stockholder be reduced rateably.

Thereupon.

Be it Further Resolved that the Directors of this corporation be directed and authorized to certify to the Secretary of State, of the State of Texas, this reduction of capital stock.

428 Upon motion of Mr. J. T. Harrell, seconded by Mr. J. Will Gray, it was

Resolved that the Directors of this corporation be, and they hereby are directed to purchase all of the assets of the Marlborough Addition to the City of Wichita Falls, Texas, a joint-venture, for a cash consideration of $65,000.00, and the assumption by this corporation of the existing indebtedness against said addition, said purchase to be as of January 1st, 1930.

Said resolution was unanimously adopted.

The Secretary of this corporation was directed to attach to the minutes of this meeting a condensed balance sheet, showing the assets to be purchased from said Marlborough Addition, and the liabilities to be assumed.

No further business coming before said meeting, upon motion, duly made and seconded, the same adjourned.

(Signed) E. E. SCANNELL,
Chairman,

A. B. DUNCAN,
Secretary.

Mr. Humphrey:

Next offer in evidence the balance sheet of the Marlborough Addition, as of January 1, 1930.

(Marked Plaintiff's Exhibit No. 23" and reading as follows:)

429 PLAINTIFF'S EXHIBIT 23.

Assets and Liabilities of Marlborough Addition as of January 1, 1930.

Assets

| | | |
|---|---|---|
| City National Bank | $ 434.02 | |
| E. C. De Montel | 394.24 | |
| Cost of Sale Contracts | 18,722.37 | |
| Deposit, Electric | 771.62 | |
| Marlborough Addition | 108,751.88 | |
| Municipal Gas Co. | 2,000.00 | |
| Notes and Contracts | 25,116.20 | |
| Total | | $156,190.33 |

Liabilities

| | | |
|---|---|---|
| Notes payable, City Natl. Bank | $ 43,500.00 | |
| Notes payable, Sec. National Bank | 2,500.00 | |
| Notes payable, R. D. Pool | 5,000.00 | |
| Notes payable, Guar. St. B.&L. | 4,750.00 | |
| Notes payable, J. A. Kemp | 5,000.00 | |
| Notes payable, C. D. Shamburger | 5,293.95 | |
| Sales Contracts | 25,132.38 | |
| Sconnell-Totzke | 14.00 | |
| | | 91,190.33 |
| Net Worth | | $ 65,000.00 |

Mr. Humphrey:

We next offer in evidence copy of the amendment decreasing the capital stock of the company, executed on

the 17th day of March, 1930, by J. T. Harrell, J. Will Gray and E. E. Scannell, certificate to which is at-
430 tached, Secretary of State.

Instrument marked "PLAINTIFF'S EXHIBIT 24."

Said exhibit being executed on the 17th day of March, 1930, by J. T. Harrell, J. Will Gray and E. E. Scannell. The certificate of the Secretary of State being attached. Decreasing the capital stock from $75,000.00 to $65,000.00 and decreasing the number of shares from 760 to 650 of par value of one hundred dollars each.

Mr. Humphrey:

Next offer in evidence Waiver of Notice of the meeting of the Directors of the Texas Investment Company dated 17th day of March, 1930, and the minutes of said meeting signed by J. Will Gray, E. E. Scannell, and J. T. Harrell.

(Instrument marked "PLAINTIFF'S EXHIBIT 25," and reading as follows:)

Texas Investment Company of Wichita Falls.

Waiver of Notice of Meeting of Directors.

We, the undersigned, being the present Board of Directors of Texas Investment Company of Wichita
431 Falls, hereby waive notice of the time, place and purpose of a special meeting of the Directors of said corporation, to be held at the office of said corporation in the City of Wichita Falls, Texas, on the 17th day of March, A. D. 1930, immediately following a special meeting of the stockholders of said corporation, the primary purpose of said meeting being to comply with the

action of the stockholders special meeting and for the purpose of transacting such other business as may properly come before said meeting.

Witness our hands this 11th day of March, A. D., 1930.

(Signed) J. WILL GRAY,
E. E. SCANNELL,
J. T. HARRELL.

Texas Investment Company of Wichita Falls.

Special Meeting of the Board of Directors.

Special meeting of the Board of Directors of Texas Investment Company held at the office of the corporation, on the 17th day of March, A. D, 1930, pursuant to waiver of notice thereof, executed by all of the Directors. Said meeting was held immediately following a special meeting of the stockholders and all of the directors were present, namely J. T. Harrell, E. E. Scannell and J. Will Gray.

Upon motion duly made and seconded it was unanimously—

432 Resolved that we, the Board of Directors of said corporation, in complaince with the action of the stockholders, do hereby decrease the capital stock from $75,000.00 to $65,000.00, decreasing the number of shares from 750 to 650, of the par value of $100.00 each, and that the shares of stock held by each stockholder be reduced rateably, and the Secretary is hereby instructed to cancel the stock certificates now outstanding and issue new certificates to each stockholder.

Upon motion duly made and seconded it was unanimously—

Resolved that the President, E. E. Scannell and the Secretary, A. B. Duncan, be and they are hereby authorized and empowered to execute and deliver deeds to real estate belonging to this corporation, located in Marlborough Addition to the City of Wichita Falls, Texas, and to attach the seal of the corporation thereto.

Upon motion duly made and seconded it was unanimously—

Resolved that the Secretary of this company be and he is hereby authorized, instructed and directed to open and keep a bank account with The City National Bank of Wichita Falls, in the name of and for the use of this Company, and to deposit in said bank to the credit of this Company from time to time, any and all moneys and checks, and until otherwise ordered said bank to be and hereby is authorized to make payments from the funds of the Company on deposit with it upon and according to the check of this company signed by its Secretary, A. B. Duncan and countersigned by its President, E. E. Scannell or its Vice-President, J. T. Harrell.

433 The Secretary of this corporation was directed to file with the Secretary of State of the State of Texas the required information and instruments and to take such other steps as may be necessary for the reduction of the capital stock of this corporation in compliance with the resolution adopted.

No further business coming before said meeting, upon motion duly made and seconded, the same adjourned.

(Signed) J. WILL GRAY,
E. E. SCANNELL,
J. T. HARRELL,
(Signed) A. B. DUNCAN,
Secretary.

Mr. Humphrey:
Then I want to offer in evidence the original cross action of the Wichita Royalty Company, which I will have to supply later.

434 It Is Agreed that the original cross action of the Wichita Royalty Company against the City National Bank of Wichita Falls, Texas was filed on Feb. 14, 1931 in the District Court of Wichita County, Texas.

Mr. Humphrey:
I offer in evidence the date of the judgment in the trial Court. Can we agree on it, as being on February 25, 1932?

Mr. Rogers:
Yes.

Mr. Humphrey:
It is agreed, Febuary 25, 1932.

435 Mr. Humphrey:
I offer in evidence the date of the judgment of the Court of Civil Appeals, affirming this case, which is February 24, 1934, shown in the 74th Southwestern Second, 661.

Mr. Humphrey:
Also the date of the judgment of the Supreme Court reversing the case December 11, 1935, and reported in the Eighty-Ninth, Southwestern, Second, 394.

Mr. Humphrey:
And the date of the rehearing modifying the original opinion on April 8, 1936, reported in 93 S. W. (2) 143.

Mr. Humphrey:
Next offer in evidence deed of trust executed by the Wichita Royalty Company, certified copy dated the 6th

day of December 1933, in favor of Charles L. Black, and Guy Rogers, by E. E. Scannell, trustee, certified by Charlie Thut, county clerk of Gray County. Recorded in Gray, Archer, Young and Wheeler Counties.

(Instrument marked "Plaintiff's Exhibit 27" and reading as follows:)

436 PLAINTIFF'S EXHIBIT 27.

The State of Texas,
County of Wichita.

Know All Men By These Presents: That Wichita Royalty Company, acting herein by its sole Trustee hereunto duly authorized, has and by these presents does Bargain, Sell, Transfer and Assign unto Charles L. Black of Austin, Travis County, Texas, all oil and gas produced or to be produced from any and all of its properties wherever situate, as well as all moneys due or to become due Wichita Royalty Company by any and all persons, firms and corporations for oil or gas purchased or to be purchased from Wichita Royalty Company or run to its credit, hereby granting to the said Charles L. Black full power and authority to have and receive any and all minerals heretofore or hereafter produced from or accruing to any estate whatsoever owned and claimed by Wichita Royalty Company and to receive all moneys from the sale thereof, as well as to receive all moneys payable to Wichita Royalty Company as bonus, rental, royalty, or money in lieu of royalty, hereby vesting in the said Charles L. Black full title and right of possession to all of same.

And Wichita Royalty Company, for value to it in hand paid by Ray Bland of Wichita County, Texas, and in further consideration of the debts and trusts hereinafter mentioned has Granted, Sold, Conveyed, Transferred, Assigned and set over and by these presents does Grant,

437 Sell, Convey, Transfer, Assign and set over unto the said Ray Bland, as trustee, and to his successor or substitute in this trust and to his and their assigns forever, all and singular all of the property of said Wichita Royalty Company, a trust estate created by Articles of Agreement filed in the office of the County Clerk of Wichita County, Texas whether such property be personal or real and whatsoever description and wheresoever situated, including land, interests in land, leases, royalties, mineral estates, leasehold interests, oil and gas rights, minerals, moneys due for the sale of minerals, accounts receivable, choses in action, bonuses, rentals and moneys due or to become due in lieu of royalty, together with the increase thereof and rights and privileges now existing or later to exist by reason of present ownership or based upon or growing out of such present ownership and generally it is intended to vest in the said trustee full and absolute title to all of the property of Wichita Royalty Company.

To Have and to Hold the above, described properties, together with all and singular the rights and appurtenances thereto in anywise belonging unto the said Ray Bland, trustee, and to his successor or substitute in this trust and his and their assigns forever.

This sale and conveyance is, however, for the following purposes and upon the following conditions and with the following rights and powers, namely:

438 If the said Wichita Royalty Company shall well and truly pay to Charles L. Black the sum of Five thousand ($5,000) Dollars, or so much thereof as may be equal to the reasonable value of professional services performed and to be performed by Charles L. Black for and on behalf of Wichita Royalty Company pending final judgment in cause No. S4549-B on the docket of the 78th District Court of Wichita County, Texas, now on appeal and being cause No. 12784 upon the docket of the Court

of Civil Appeals for the second Supreme Judicial District of Texas at Ft. Worth, wherein Wichita Royalty Company, et al, are appellants and City National Bank of Wichita Falls, Texas, et al, are appellees, as well as the further sum equal to the reasonable and necessary cost and expense incident to said litigation including costs of Court, costs of appeal, costs of briefing, costs of printing briefs and/or records, costs of transcript, costs of record, costs of attorneys in furtherance of said cause and/or appeal outside of Austin, Texas, as well as any and every cost and/or expense incurred or to be incurred in connection with such services and shall pay said items as of their respective maturities, namely, upon the rendition of said services and the incurring of said costs and expense, then this obligation to be null and void and to be released by the said Charles L. Black.

It is the agreement between Wichita Royalty Company and Charles L Black that he will faithfully and to the best of his ability represent Wichita Royalty Company in the above litigation pending final judgment
439 and that for such services so rendered and to be rendered Wichita Royalty Company will pay the reasonable value of such services, as well as all costs and expense incurred as above shown. It is the further agreement that $1250.00 of the above amount shall be due and payable by Wichita Royalty Company to said Charles L. Black ninety days from the date hereof and that such further sums shall be due and payable to him from time to time in amounts equal to the value of services performed and at times when such services are performed and/or costs and/or expense incurred, but in no event shall Wichita Royalty Company's obligation exceed the total amount above set out and for the security of which this instrument is executed.

Should Wichita Royalty Company fail to pay all or any accrued portion of the above described indebtedness at maturity, thereupon and in such event the said Trustee

is hereby authorized and empowered and it shall be his duty, at the request of the said Charles L. Black, to sell all the above described property, or such portion thereof reasonably sufficient to bring at foreclosure sale an amount of money equal to the amounts then due, said sale to be to the highest bidder for cash at the Courthouse door of the county in which the property to be sold, or any part thereof, is situated, the same to be made at public outcry between the hours of ten o'clock A. M. and four o'clock P. M. on the first Tuesday in any month after having given notice of such sale by posting written or printed notice at three public places in such county and in each of the counties where properties to be sold are situated, one of which notices shall be posted at the Courthouse door of said county and/or counties, and all of which notices shall have been posted for at least twenty-one days successively next before the sale.

Upon any such sale the Trustee is authorized and empowered, in the name of Wichita Royalty Company, to make to the purchaser or purchasers hereunder good and sufficient instrument of conveyance conveying the property so sold to the purchasers in fee simple with general warranty of title, and to receive the proceeds of sale and to apply the same as follows: (1) to the payment of all necessary cost and expense incident to the execution of said trust, including a fee to the trustee of ten percent to be estimated upon the amount realized at said sale: (2) to the payment of the matured portion of the debt hereinabove described; and (3) the remainder, if any, shall be paid to Wichita Royalty Company or to its successors and/or assigns.

Since Wichita Royalty Company's debt to Charles L. Black and costs and expenses incurred and accrued hereunder shall mature and become payable from time to time, it is specially provided that upon the maturity of a portion of the debt hereinabove described and at the re-

quest of the owner thereof, the trustee is directed and is empowered to sell a portion of the property covered hereby in the form. time and manner above provided, but which partial sale shall not exhaust the power again to sell and it is specially provided that said trustee is authorized, empowered and directed to make successive sales upon the respective maturities of portions of said obligation from time to time as same mature, said respective sales to be in the form, time and manner above provided.

441

This assignment and conveyance is in further trust to secure Guy Rogers in the payment of all costs and expense incident to or growing out of the above litigation and is additional security to that given for the same debt and upon the same contract between Wichita Royalty Company and Guy Rogers dated February 25, 1932, and filed for record in the office of the County Clerk of Okmulgee County, Oklahoma, at nine o'clock A. M. March 4, 1932, and there recorded in Record No. 443 pages 90 60 95 inc., to which reference is here made, but it is expressly provided that the lien hereby created in favor of and the rights hereby vested in Charles L. Black shall be and the same are hereby made in all things prior and superior to the rights of Guy Rogers.

Should the said Charles L. Black and/or Guy Rogers die or become incapacitated and/or unwilling to render professional services or incur costs and/or expense incident to said litigation pending the final determination thereof, it is specially provided that the security hereby created shall subsist and be valid in favor of whomsoever Wichita Royalty Company may select to render such further services and for those persons, firms, or corporations incurring costs and/or expense in connection therewith.

442

In case of the death, resignation or inability, or failure or refusal of Ray Bland within five days after request to

make sale and perform said trust, then the beneficiaries hereunder, or either of them, may in writing appoint a substitute trustee who shall succeed to all the estate, rights, powers and trusts hereinbefore granted to and vested in the trustee.

In Witness Whereof, these presents have been duly executed this the 6th day of December, A. D. 1933.

WICHITA ROYALTY COMPANY,
By E. E. SCANNELL,
Trustee.

The State of Texas,
County of Wichita.

Before Me, the undersigned authority, a Notary Public, on this day personally appeared E. E. Scannell, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacity therein stated.

Given under my hand and seal of office, This the 8th day of December, A. D. 1933.

GRACE JARNAGAN,
(Seal) Notary Public, Wichita County, Texas.

443 Filed for Record April 4th, 1934 at 11:30 A. M.

Recorded April 9th, 1934 at 11:05 A. M.

CHARLIE THUT,
County Clerk.
By KATHERINE HOWELL,
Deputy.

Clerk's Certificate.

The State of Texas,
County of Gray.

I, Charlie Thut, County Clerk in and for Gray County, Texas, do hereby certify that the above and foregoing is a true and correct copy of an instrument executed by Wichita Royalty Company in favor of Charles L. Black, as same appears of record in Vol. 24, page 349 of the Deed of Trust Records of Gray County, Texas.

Given Under My Hand And Seal Of Office This the 11th day of October, A. D. 1934.

CHARLIE THUT,
County Clerk in and for Gray County, Texas.
By OLA GREGORY,
Deputy.

Mr. Humphrey:

We offer in evidence trustee's deed, Plaintiff's Exhibit 28:

Dated August 7, 1934, from Ray Bland Trustee.

Consideration $250.00, paid by Guy Rogers, as trustee, under the will of L. B. Rogers, deceased, as follows:

444 (Instrument marked "Plaintiff's Exhibit 28" and reading as follows:)

PLAINTIFF'S EXHIBIT 28.

The State of Texas,
County of Wichita.

Know All Men By These Presents: That, Whereas, On the 8th day of December, 1933, Wichita Royalty Company, acting through its Trustee hereunder duly auth-

orized, executed and delivered to Ray Bland all of its property in trust to secure Charles L. Black in the payment of certain indebtedness set out in such deed of trust which is of record in Book 25, at page 75 of the Deed of Trust Records of Young County, Texas; in Vol. 20, page 107 of the Deed of Trust Records of Archer County, Texas; in Vol. 18, page 461 of the Deed of Trust Records of Wheeler County, Texas; and in Vol. 24, page 349 of the Deed of Trust Records of Gray County, Texas, which deed of trust provided that upon the maturity of a portion of the debt therein described, the Trustee therein was authorized to sell all or any portion of the property thereby covered without exhausting the power of future sales; and

Whereas, Default has been made in the payment of a portion of said debt which was past due and unpaid, and the said Charles L. Black, the holder of said indebtedness, has since such default requested the said trustee to sell a portion of the property covered by such deed of trust, such sale to be held without prejudice to the right and power thereafter to offer for sale and to sell
445 such other and further properties of said mortgagor necessary to satisfy the mortgagor's indebtedness to his beneficiaries therein for present or future indebtedness, such portion of the property covered by such deed of trust being described as follows, to-wit:

All and singular the property of the said Wichita Royalty Company situated in the Counties of Archer, Young, Gray and Wheeler, Texas, whether such property be personal or real and whatsoever its description, including the land, interest in land, leases, royalties, minerals estates, leasehold interests, oil and gas rights, minerals, monies due from the sale of minerals, accounts receivable, choses in action, bonuses, rentals and monies due or to become due in lieu of royalty; and

Whereas, Pursuant to such request, and to the provisions of said deed of trust, I proceeded to sell said prop-

erty at public auction at the Courthouse door of Archer County, Texas, between the hours of ten o'clock A. M. and four o'clock P. M. on Tuesday the 7th day of August, A. D. 1934, after having given public notice of the time, place and terms of such sale, as prescribed by the terms of said deed of trust and after first, posting written notice thereof for three consecutive weeks prior to the date of sale in three public places in Archer County, Texas, Gray County, Texas, Wheeler County, Texas, and
446 Young County, Texas, such posting being three in number in each of said counties, one of such notices being posted within the same town; and

Whereas, at such sale said property was by me struck off to Guy Rogers, Trustee under the will of L. B. Rogers, deceased, for the price and sum of $250.00, he being the best and highest bidder for the same and said sum being the best and highest bid therefor;

Therefore, Know All Men By These Presents: That I, Ray Bland, of Wichita County, Texas, Trustee as aforesaid, by virtue of the powers granted to me by said deed of trust and in consideration of the premises and of the sum of $250.00 to me cash in hand paid by the said Guy Rogers as Trustee under the will of L. B. Rogers, deceased, the receipt whereof is hereby acknowledged (which said sum of money I have applied according to the directions of said deed of trust) have, Granted, Sold and Conveyed, and by these presents do Grant, Sell and Convey unto the said Guy Rogers, Trustee under the will of L. B. Rogers, deceased, of the County of Wichita and State of Texas, the property hereinabove particularly described, being all and singular the property of Wichita Royalty Company situated in the Counties of Archer, Young, Gray and Wheeler, Texas.

To Have And To Hold, The said property, together with all and singular the rights and appurtenances thereto in

anywise belonging unto the said Guy Rogers as
447 Trustee under the will of L. B. Rogers, deceased, his heirs and assigns forever. And for and on behalf of the Wichita Royalty Company, the grantor in such deed of trust, and its successors, I do hereby bind the said Wichita Royalty Company and its successors, to warrant and forever defend all and singular said premises; in so far as is authorized by such deed of trust, unto the said Guy Rogers, Trustee under the will of L. B. Rogers, deceased, his heirs and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof.

Witness My Hand, This the 7th day of August, A. D. 1934.

RAY BLAND,
Trustee.

The State of Texas,
County of Wichita.

Before Me, The undersigned authority, on this day personally appeared Ray Bland, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same as Trustee, for the purposes and consideration therein expressed and in the capacity therein set forth.

Given Under My Hand And Seal Of Office, This 9th day of August, A. D. 1934.

FERN KOLB,
(Seal) Notary Public Wichita County, Texas.

448 The State of Texas,
County of Young.

I, Pearl Matthews, Clerk of the County Court in and for said County, do hereby certify that the foregoing instrument, dated the 7th day of August, 1934, with its

Certificate of Authentication, was filed for record in my office, the 21st day of August, 1934 at 8:00 o'clock A. M., and duly recorded the 22nd day of August, 1934, at 11:40 o'clock A. M. in Deed Record of said County, in Vol. 155, on pages 615.

Witness my hand and seal of County Court of said County at Office in Graham, Texas, the day and year last above written.

PEARL MATTHEWS,
(Seal) Clerk County Court, Young County, Texas.
By FRANCES SELL,
Deputy.

Filed for Record August 28th, 1934 at 1:10 P. M.

Recorded August 30th, 1934 at 11:30 A. M.

CHARLIE THUT,
County Clerk.
By KATHERINE HOWELL,
Deputy.

Clerk's Certificate.

The State of Texas,
County of Gray.

I, Charlie Thut, County Clerk in and for Gray County, Texas, do hereby certify that the above and foregoing is a true and correct copy of a "Trustee's Deed" exe-
449 cuted by Ray Bland, Trustee in favor of Guy Rogers, Trustee under the will of L. B. Rogers, deceased, as same appears of record in Vol. 63, page 469 of the Deed Records of Gray County, Texas.

Given Under My Hand And Seal Of Office This the 11th day of October, A. D. 1934.

CHARLIE THUT,
County Clerk in and for Gray County, Texas.
By OLA GREGORY,
(Seal) Deputy.

Mr. Humphrey:

I next offer in evidence a mortgage on certain properties in Oklahoma, a copy of which will be furnished later, executed by the Wichita Royalty Company to Guy Rogers, as mortgagee.

450 H. H. CARSON, a witness for the plaintiff, being first duly sworn, examined in chief by Mr. Humphrey, testified as follows:

My name is H. H. Carson. I am Assistant Cashier of the City National Bank, Wichita Falls, Texas, have been working for that bank thirteen years, with the exception of about ten or eleven months. I have been devoting some time to the inspection and examination of the records of the Wichita Royalty Company, as to their property. I was furnished a record showing what properties they owned in Wheeler and Gray Counties. I will read a list of the properties that were owned in each of those counties, beginning with Archer, which is property No. 80. The north forty acres, block 21, of Anderson Subdivision of his south pasture as per plat of record in the records of Archer County. Property No. 77, in Archer County, being the north one hundred acres of the south one hundred and forty acres of block 1,598, TE & L Co Survey, Abstract 493. The royalty conveyed in Property No. 80, is 1/16 of all the oil royalty and gas royalty and royalty due, to be paid under the terms of that lease. It is dated the 20th day of January, 1925. Here is the south thirty-two acres of block 21, of the south Anderson Ranch land; south sixty acres of the west eighty acres of block 22, Anderson South Pasture Subdivision; north twenty-five acres of the east fifty acres of the west one hundred acres, block 19, Anderson south pasture; east sixty acres

451 of the west one hundred sixty acres of block No. 19, South Anderson pasture subdivision. The interest conveyed, according to the information I have, is one-sixteenth of all the oil and gas royalty. The

instrument is dated July 1, 1925. In property No. 77, Archer County, the interest conveyed is an undivided 1/64 interest in and to all the oil and gas that may be produced; that is the north one hundred acres of the south two hundred and forty acres, block 1,598, TE & L Company Survey, abstract 193. Property No. 79, is one hundred and seventeen acres of land out of the Isaac Holman League and Labor of land, shown by deed dated the 30th day of June, 1925, signed by J. H. Massie, and George Ray, Wichita Royalty Company, conveying to the Wichita Royalty Company 1/16 interest in all the oil and gas and other minerals produced in the tract of one hundred and seventeen acres of land. The next property is No. 82, dated October 9, 1925, signed by B. L. Fain, conveying 1/64 interest in and to the oil and gas and other minerals.

I will make a list of these properties, and introduce it in evidence later.

J. T. HARRELL, being first duly sworn, examined in chief by Mr. Humphrey, testified as follows:

My name is J. T. Harrell. I am president of the City National Bank in Wichita Falls. For a number of years I was president of the City National Bank of Wichita Falls, which is now in liquidation, and which is
452 the plaintiff in this case. I succeeded P. P. Langford as president. I am familiar with the notes that you have offered in evidence. Plaintiff's Exhibit No. 8 has the genuine signature of Mr. Scannell on the note, for the Wichita Royalty Company. I handled that transaction with Mr. Scannell, that was a renewal note of another obligation. At the time the original obligation was made, George W. Peckham was acting for the Wichita Royalty Company. The original note was a renewal of two loans, I don't know exactly the amounts. Referring to the record, the first note came into the bank on January 16, 1926, in the sum of $15,300.00, the second one came in on March 1, 1926, in the sum of $25,500.00, there-

fore, the original obligation was $40,000.00. That note was renewed and paid on from time to time until George Peckham died. The money was deposited to the credit of the Wichita Royalty Company when the original loans were made. After Mr. Peckham died, Mr. Scannell succeeded him as trustee, and he renewed the note and paid on it. This represents the balance unpaid on the original obligation, and this balance has never been paid. I turned that over to our lawyers, and agreed to pay an attorney fee, provided in the note, of ten percent.

This note which you now hand me, Texas Investment Company note, shows it has an unpaid balance of $28,000.00. That note originated in the bank during Mr. Peckham's lifetime, and was not in any way, so far as I know, connected with the Wichita Royalty Company up

453 until the time of Mr. Peckham's death. That was a renewal of certain indebtedness that the Texas Investment Company owed, the Texas Investment Company and the Marlborough Addition are the same concern. The note was indorsed by the Wichita Royalty Company after Mr. Peckham's death, prior to Mr. Peckham's death it was handled in the Marlborough Addition and indorsed by Mr. Kemp and Mr. George W. Peckham and myself. Mr. Peckham's name was left off after his death, because the Wichita Royalty Company claimed an undivided one-half interest in those properties, that is, E. E. Scannell as trustee, claimed them. He told me personally that the Wichita Royalty Company owned half of what is known as the Marlborough Addition and set up a claim to that for his trust estate. When he told me that, we then substituted the indorsement of Mr. Peckham, with that of the Wichita Royalty Company, and set up a corporation to handle the property known as the Texas Investment Company. That corporation had actually been in process of formation prior to Mr. Peckham's death, the papers had not been filed. But Mr. Peckham had signed them after Mr. Scannell advised me of the ownership by the Wichita Royalty Company of this half interest in the Marlborough Addition he indorsed the

note, and it was renewed from time to time. Interest was paid and payments were made on the principal. Mr. Scannell contributed to the payment on the principal from the funds of the Wichita Royalty Company.

The relative liability of the indorsers on the note were, fifty percent for the Wichita Royalty Company,
454 Twenty-five percent for J. T. Harrell and twenty-five percent for J. A. Kemp.

When the note fell due and was not paid, I foreclosed under the terms of the pledge agreement, to sell the assets. They brought twenty-thousand dollars, the note shows a credit for that amount, leaving a balance of $21,500.00 owed on the note, and that would be distributed, fifty percent for the Wichita Royalty Company, twenty-five percent for J. A. Kemp and twenty-five percent for myself. The Wichita Royalty Company would owe fifty percent of the deficiency on that note, which has never been paid.

Direct Examination.

By Mr. Boone:

I became connected with the City National Bank in January, 1920, that was the City National Bank that is commonly known as the old bank. The new bank was organized in March, 1933, and its name is the City National Bank in Wichita Falls. I came from Clarinda, Iowa. Before I came to Wichita Falls, I was connected with the Clarinda National Bank for a period of nine years, prior to that time, I was with the National State Bank of Mount Pleasant for two and a half years, and prior to that with the Winfield State Bank approximately two years, and prior to that with the Oxford State Bank of Oxford, Iowa, between five and six years. My principal business has been banking. I came to Wichita Falls in January, 1920. At the time I became connected with the City National Bank of Wichita Falls, I was
455 Junior Vice-President. There were several vice-presidents at that time, Mr. Snyder, and Mr.

Langford, and Mr. Kemp was the President. Mr. Robertson was also a junior vice-president. At the time I came to Wichita Falls I did not have any place in the affairs of the bank, because I was not acquainted. I met Mr. Peckham prior to coming to this bank, that is, this building. The bank consolidated and moved into this building in May, and I met Mr. Peckham. Mr. Snyder introduced me to Mr. Peckham in the lobby of the old bank, in May, 1920. I recall that when Mr. Snyder introduced me to Mr. Peckham that Mr. Peckham had just been married or was about to marry, a woman who worked for the City National Bank. I do not recall her association with the bank, but I do recall Mr. Snyder saying he was marrying an employee of the bank. At that time I should judge the bank had probably fifty employees. I had not gotten well acquainted with all of the employees before we moved into this building.

Since this suit has arisen, I have found out what George Peckham owed the City National Bank at the time I came here; the records indicate in January, 1920, $10,544.00. I was not acquainted with Mr. Peckham then, and had nothing to do with making that loan. He was loaned an additional amount which increased his total, on February 5, $13,570.00. On February 9, his loan was increased to $15,990.00 and then a second note on that same day, increasing his balance to $18,431.00. On February 10 it was increased to $21,471.00. I am reading from the liability ledger of the City National Bank of Wichita Falls
456 in the year of 1920, beginning in January. The peak of his loans was $26,269.26, February, 1920. Payments were made during 1920, until 1921, he owed the bank $8,644.36. It was toward the latter part of 1920 before I had any contact with Mr. Peckham, or knew him personally. I had nothing to do with making these loans when the peak reached something over twenty-six thousand dollars.

My authority, as Junior Vice-President was not enlarged to any great extent after we moved to the new bank in May, 1920, due to the fact that the bank had gone

into a consolidation in May, 1920, the National Bank of Commerce, it was what you might say was over-officered. it brought two banking families together and the senior officers of both of the banks for a period of years. Mr. Snyder and Mr. Robertson and Mr. Jones with the City National Bank. Mr. Reed and his associates. I was a new man in the community and the very fact of those two families going together and my lack of acquaintance. I did not have any prominent place. I occupied the last desk in the row of offices for some year or more. I worked on the principal part of the collections.

Some time in 1921 they turned over to me this $26,000.00, with some credits and renewals on it, of George Peckham, for collection. After I took over that matter for collection, I had regular contacts with Mr. Peckham, and the item was charged off, I think, in 1921. I don't think I ever made any collection from Mr. Peckham. The reason I fix these dates is because of the fact that the notes I handled were hard notes, and because of
457 my lack of acquaintance. Mr. Peckham had reduced this item down and had gotten in strained circumstances financially, and could not pay his note, and the note was at that time out of the active assets of the bank—that was 1921, in December, and the amount charged off at that time was $8,644.36, by the banking officials.

Mr. Peckham's attitude toward his obligation was always very good. He did everything he could to protect his obligations and I recall very distinctly soon after this note was charged off, that I had a conversation with him, and in that conversation it developed for the first time, that he knew that his note was not in the active files, and it worried him considerably. The next day he came in, after the renewal of this note—I don't remember the exact date—I remember we had other conferences on the maturity of the note, and he brought me in a deed to his home. He was married and lived on Monroe Street, Lot 3, Block 80, was his homestead. The deed which he brought was signed by himself and Mrs. Peckham. He

voluntarily gave me the deed. I did not ask him for it, and he said he would move out any day we wanted him to move out, and that he could not pay the note. I told him that we were not asking for his homestead, that the folks believed in him and we thought that he would make every effort to protect his liability and he insisted on leaving the deed with me and I filed it in my desk. I reported the fact of his attitude to the directors of the bank. As far as I knew, Mr. Peckham was telling us the truth. I knew of no assets that he had at that time. After
458 that he continued to come back periodically on the obligation as it matured. I think the record will indicate there was some kind of a short renewal, sixty, ninety and one hundred and twenty days. He always came in on time, and finally redeemed the note: May 19, 1923, he paid $144.26; December 18, he paid $500.00; February 21, 1924, he paid $3,000.00; June 11, 1924, he paid $5,000.00.

I have not had any experience in bookkeeping for a good many years, and did not keep any of the books of the old bank, however, I am refreshing my recollection from the records that were kept.

The attitude Mr. Peckham exhibited toward his indebtedness gave me a favorable impression of him, and not only me but my associates in the bank; naturally we felt that he had done everything that he possibly could to protect his obligation. It made us feel that he regarded his obligations seriously. During none of that time did I ever hear anyone charge George Peckham with being a man that would not pay his obligations or was not honest, or cast any reflection on him. From that time until 1929, when he died, I never heard anyone cast any reflections on George Peckham.

By virtue of Mr. Peckham's attitude toward the charge off of the $8,600.00 note, I did not have the slightest inclination to have any doubt concerning what he said to me about any transaction I was engaged in. George Peckham died in November, 1929, and during the time I never heard his honesty and integrity questioned.

459 he was well regarded. After George Peckham's financial distress in 1932, and up until the time he died, he was an active trader, he bought and sold oil properties, oil and gas leases. From 1921 up until the time of his death, at times, he kept large amounts of money in the bank, and large sums of money passed through the bank. I never at any time had anything brought to my knowledge, of any kind or character with reference to any suspicion concerning Mr. Peckham's misappropriation of any funds.

In 1929 is what is commonly known as the stock market blowup, and the panic was precipitated in Februnry, 1929 and 1930.

Mr. Kemp died November 16, 1930. He was chairman of the old City National Bank up until the time of his death, had been connected with the bank prior to my connection, for many years. Mr. Kemp was recognized as one of the prominent leaders of this community. In other words, we heard him called the Daddy of the Town. He was foremost in civic matters and business matters. He owned large blocks of real estate and stocks and various corporations locally, he was regarded as one of our most substantial citizens. George Peckham was also well regarded financially. On November 7, 1929. Mr. Peckham died very suddenly in the Wichita Club, on the elevator coming down. He died instantly, and did not have time to prepare his financial affairs before his death. Mr. Peckham was a customer of the City National Bank during the time I was connected with it. How-
460 ever, he did business with other banks, the Security National Bank, and some, perhaps, with the Wichita National. Mr. Peckham advised with me occasionally with reference to his financial affairs, his loans was known and approved by the bank's board of directors.

I will give you a history of the City National Bank, the old bank; Wichita Falls was coming through what was commonly known as a boom on account of the oil fields from Burkburnett. Everything was active, the city was

full of people. I recall when I first came down here that remarks were made that there was some two to two and a half families to every residence. The banks had large deposits, large loans, money apparently was being made easily by many people, who spent it in the same way. Soon after coming down here, the old National Bank of Commerce and the City National Bank formed a consolidation which made a large institution, bringing together at the peak, I think it was twenty-two million dollars deposits. If I recall, the loans were eighteen million dollars—those are just approximations—oil was selling at $3.50 per barrel in 1919, and the forepart of 1920. Soon after that, there was a tremendous cut in the price of oil, which caused—I might go further and say, that not only the price of oil declined, but the inflation which was caused by the reaction of the world war had set in on real estate values. All values commenced to decline, and it was about 1921 or 1922 that real estate values all over
the central part, in fact, all over the United
461 States, and especially through the central states, caused tremendous bank failures over the country in those agricultural sections. Our deposits declined from a peak of the consolidation to within eighteen months they were down to between six and seven million dollars, which called for a tremendous liquidation of loans. From 1923 we gradually begun to overcome that tremendous deflation. Our deposits increased and our loans were made satisfactory and business conditions were more satisfactory, and the bank was getting along in a very satisfactory situation, had the confidence of the community and I had become more active in the management of the bank, and personally felt that we were getting on a stable basis, to the extent that I made large investments in the bank's stock, that is, large for me. I was never considered a wealthy man. Everything went along smoothly and satisfactorily until the failure of the American Refining Company. The management of that company was directly made up of folks who were interested in the City National Bank, they were, P. P.

Langford, who was one of the prominent stockholders in the American Refining Company and the indorser on a large amount of paper. He was president of our bank. Mr. Kemp was chairman of the Board. Mr. Chenault, considered a very substantial man, was also a director of the American Refining Company, Mr. Walter Priddy, while he was not a director, was closely associated with the City National Bank and was one of our customers.

Mr. W. W. Silk was a director of our bank. Mr.
462 Bashara was closely associated with the bank and had an active account and we loaned him substantial sums of money, so the men I am talking about were substantial financially. They were all interested as directors and indorsers on large sums of money—millions of dollars—for the American Refining Company and these men failed with it financially. Mr. Langford resigned as president of the bank, and I succeeded him.

The fact of this failure and the close association with this huge industry, with the City National Bank, disturbed this community, as far as their attitude toward the City National Bank was concerned. They wondered if we were not involved with the American Refining Company. I noticed it and feared it, but we overcame it. Another year or two passed and we felt ourselves growing away from that disturbance of confidence. You must have the confidence of a community in a banking institution. Mr. Kemp then died. Mr. Kemp, as I said a moment ago, was considered the father of this community. He was first in everything locally, in public enterprises and you always saw Mr. Kemp in those enterprises. He was the man who fathered our irrigation system, the man who gave us our library and was known as a man that contributed largely of his means and was recognized as a rich man. Due to the fact that he had gotten under large obligations for some of the members of his family, after his death it became known that he was badly insolvent. He died in November, 1930, and naturally that disturbed this community.

463 The stock crash of 1929, of course, we all know what it did to the whole country. Then the

American Refining Company, the stock crash, and Mr. Kemp's death, people lost faith. The local people lost faith in the City National Bank, and there was a question whether or not they would be able to survive. A continuous withdrawals of funds set in. Back in 1929—the latter part of that year, and all through 1930, until it looked like at the end of 1930 they were going to call for us to liquidate this bank. The Board of Directors of The City National Bank were solidly in behind me in the thought to save the institution. There never was a question, in my mind, but what the depositors of the City National Bank could get their money. Whether or not we would be able to continue to pay them on demand was a question. We never, at any time, had what was known as a run, which would begin and end on a day and wind the thing up. But it was what is known as a dry run, which runs you crazy. We continued that liquidation at a time when, if we called on anybody in this room to pay their obligations it would have ruined them. We did not sue anybody. We collected notes when people were able to pay only. We did not press them. We pledged our own assets, which had been deflated and would not sell for much, but we were enabled, through, I am not talking about myself, but through the men I was associated with, to borrow money, to get credit and to continue to pay these deposits on demand, until in
464 1930 we had liquidated our deposits down to less than $2,000,000.00. I cannot tell you the figures right now, but if the public deposit was taken from that, which was secured by government bonds, you would find that we practically liquidated the old City National Bank. Then the general situation throughout the United States, closing the banks. More than five thousand banks closed, and the moratorium came along, and we were still open. Never did anybody come into the City National Bank under those trying circumstances and ask for their money that they did not get it, on their account, if they had it in the bank. The Moratorium came along, which closed all the banks for the holiday. We knew if we continued final

liquidation, the question came up in our minds, whether we would turn over the public deposit, to some other bank, and finish liquidating the unsecured deposits, or whether we would try to go on and carry on in the community. We got together and decided that this institution had, or still had, a place in this community and we believed that it had a lot of friends, if they could come to the point where they thought we were going through and were not going to fail, that was in March, 1933, during the moratorium. Our cash resources were very low when the moratorium struck. We were going along just like we had, but if the moratorium had not come, I am not saying what would have happened. We were in the position of going along from day to day. Not from the question of solvency or insolvency, but a question of ability to meet these cash withdrawals, so we
465 decided if we continued as a banking institution that we would have to put some new money into the bank. We realized that our capital was impaired, and that values of our assets had so shrunk, that it would be necessary to set up a new working capital. The New City National Bank was organized with a capital stock of four hundred thousand dollars, and a preferred stock, subscribed by the Reconstruction Finance Corporation, of four hundred thousand dollars. We arranged for credit with the Federal Reserve Bank and the Reconstruction Finance Corporation, on top of that, for substantial sums of money, and we opened our doors after the moratorium and it seemed that people realized then that we had won our battle. We have never censored the attitude of the community. We have always felt they were justified in having their fear under those facts I have outlined to you. They were just like the rest of us would be under the circumstances. We were very grateful when they felt that we had won the battle, and that they came back and the new bank is going forward, and is in sound condition. I want to say this further thing, in the history of that crisis, that I was surrounded by some of the best men in this community—this struggle, of course, of the institu-

tion is quite close to me. When I think of the loyalty of my associates, it sort of gets on my emotions, but I just want to make this statement. That I called on my directors and my present stockholders to underwrite millions of dollars in order to continue this institution, and I never presented a document to them,
466 under these circumstances, if they were called upon, at the maturity of those obligations, it would have absolutely wrecked them financially, but they signed every one that I stuck under their noses, and we won a victory in this community.

I was acquainted with the assets and liabilities of the old bank. I made the statement to my directors time and time again that we would eventually pay our deposits. It was a question of whether we could collect funds enough to meet the withdrawals. The old bank is in position to pay this amount if a judgment is gotten in this case, it has sufficient assets.

The directors and stockholders that underwrote the obligations of this bank never paid one penny of those obligations which they underwrote personally; the obligations were all obligations of the bank, underwritten by these gentlemen, and the bank paid its obligations, without calling on the stockholders and directors for any money.

We undoubtedly filed some suits, I meant when I spoke about filing suits, that very few suits were filed. In this manner, there was no lawsuits filed prior to the time of the repudiation by the Wichita Royalty Company. Prior to the time this suit was filed, I took it up with Mr. Scannell, then trustee of the Wichita Royalty Company, and attempted at that time to get him to go forward with the obligation; he had previously thereto acknowledged it, but before the filing of this suit he disavowed the same, and suit was filed.

467 Cross Examination.

By Mr. Rogers:

I think during this period we filed suit against Mr. Fain, there was no controversy over the liability. I did

not ask Mr. Fain if he would fire Mr. Scannell as an employee.

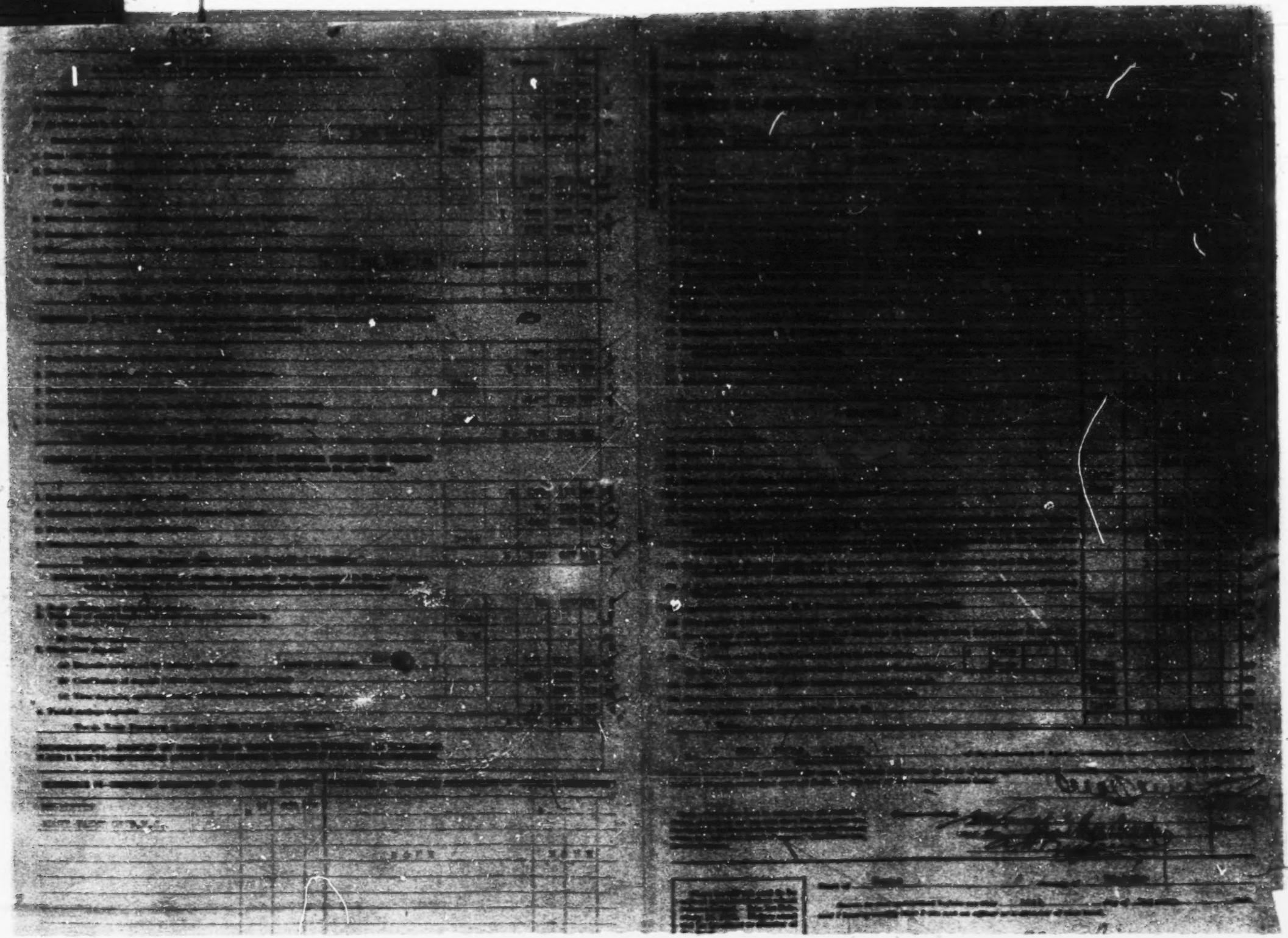
I think it first became apparent that the capital of the old bank had become impaired in January, 1932; in 1931, the bank was over extended, but the capital was intact, and I think the bank had a surplus at that time. In 1931, it was necessary to put cash in the bank to meet withdrawals, that was in October.

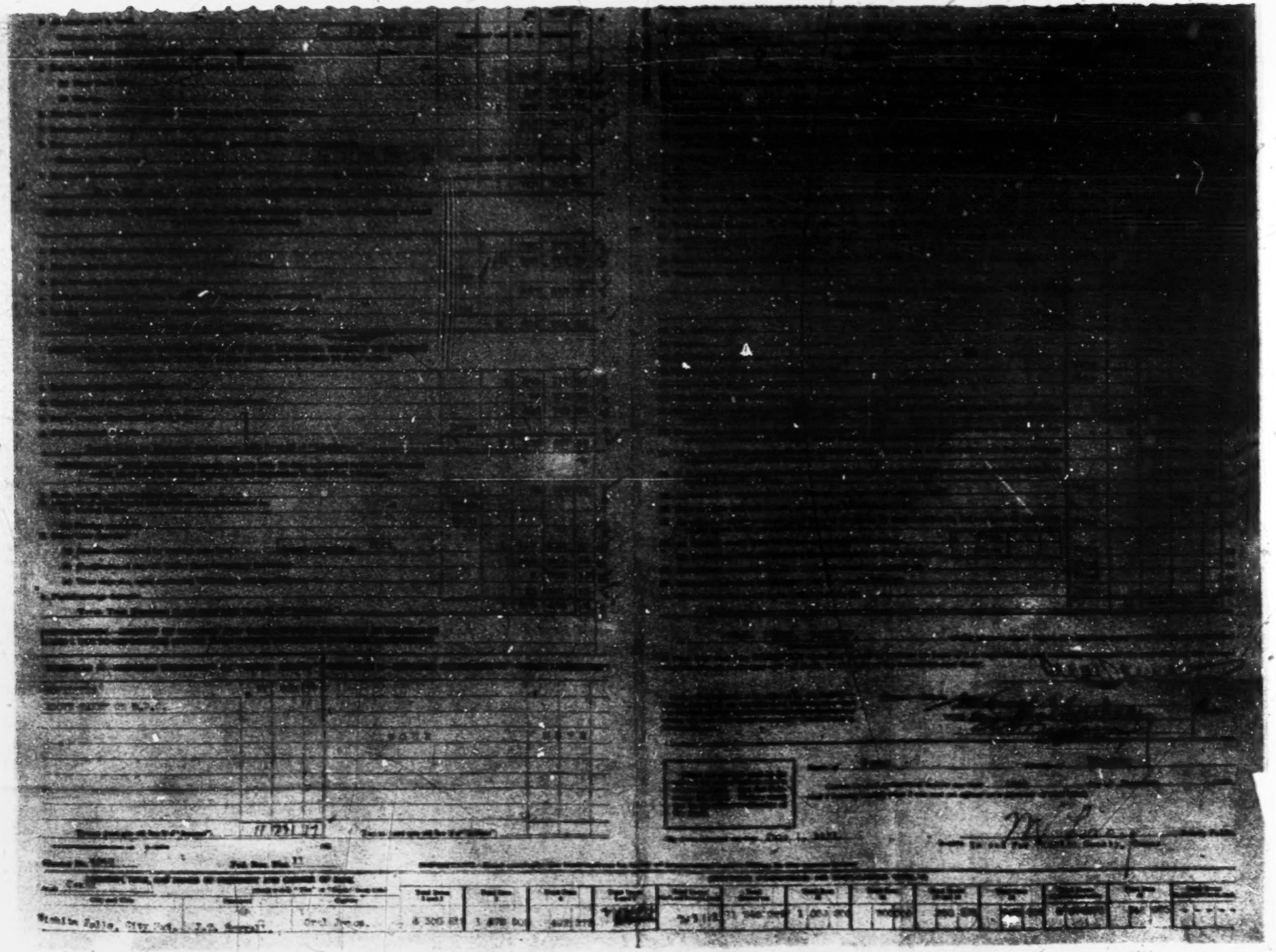
We have the reports which we make and publish, with reference to the bank, in 1929. The last report in that year is dated December 31. The report to the public is a condensed report, and the one to the comptroller is more in detail. Here is the public report here, it shows the capital, surplus and undivided profits. This is for December 31, 1929. I also have here the statements for December 31, 1930, December 31, 1931, December 31, 1932.

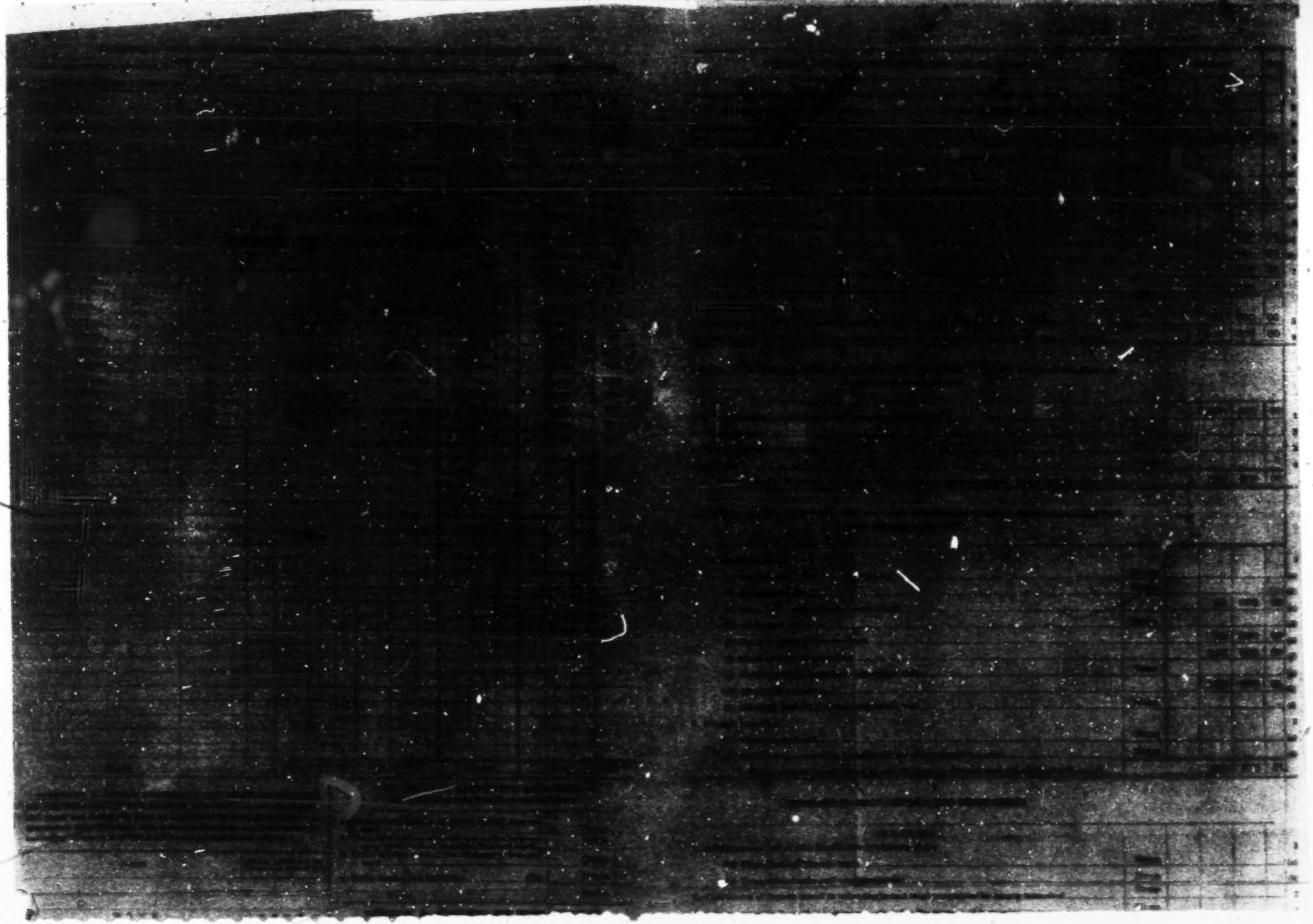
Mr. Rogers:

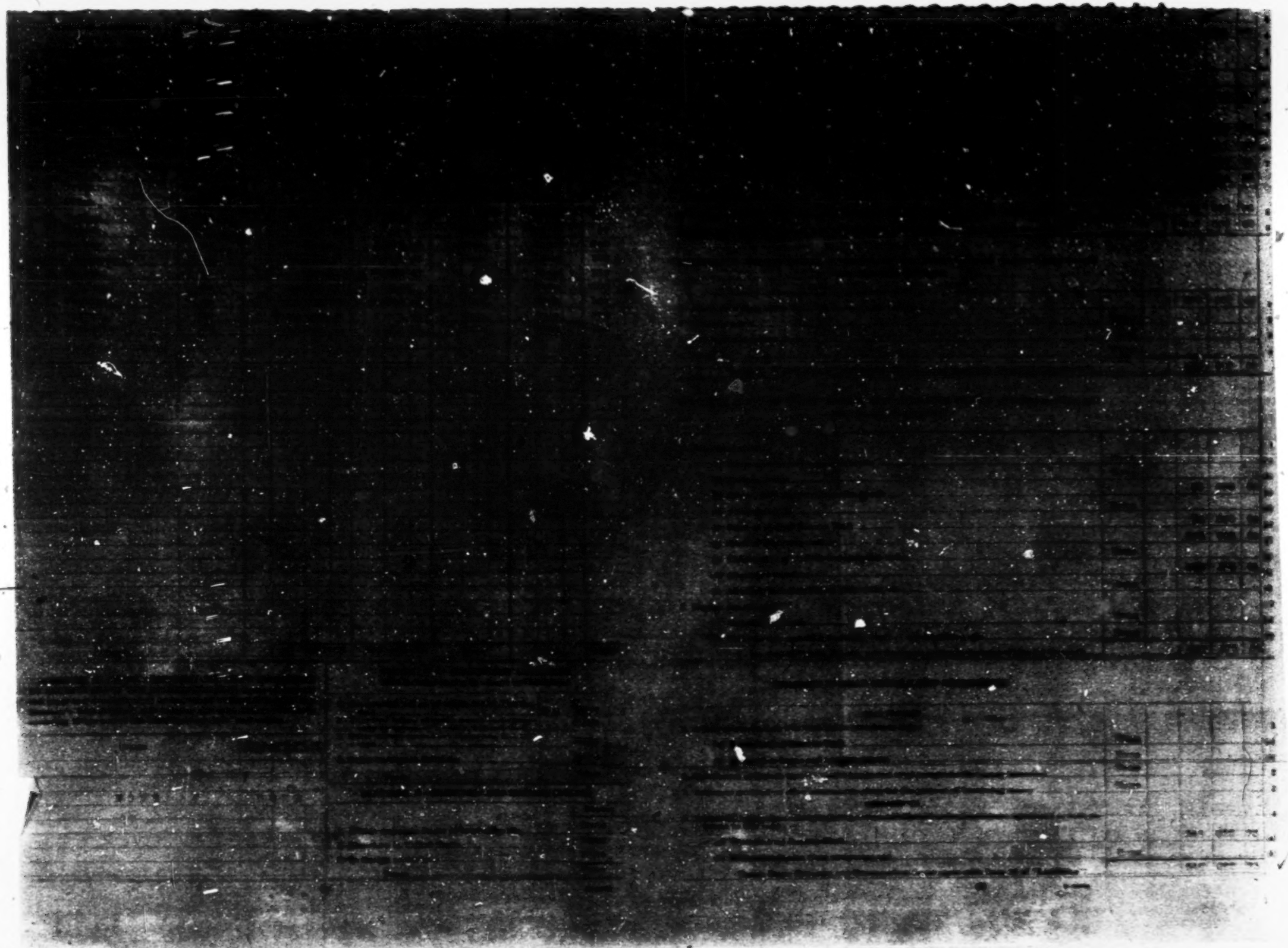
We offer those statements in evidence.

(Instrument marked "Defendant's Exhibit No. 1-4" and reading as follows:)









SCHEDULE J—DUE TO BANKS (including certified and cashiers' checks, and cash letters of credit and travelers' checks sold)

SCHEDULE K—DEMAND DEPOSITS (EXCEPT BANK DEPOSITS) SUBJECT TO RESERVE (including deposits due in 30 days or less or subject to less than 30 days' notice)

SCHEDULE L—TIME DEPOSITS (deposits payable—after 30 days or subject to 30 days' or more notice, or deposit in Federal Reserve Bank of Inspection by, and Postal Savings)

SCHEDULE M—SUPPORTED STATEMENT OF "OTHER ASSETS"

SCHEDULE N—SUPPORTED STATEMENT OF "OTHER LIABILITIES"

LIABILITIES

I, [illegible], of the above-named bank, do solemnly swear that the above statement is true, and that the SCHEDULES attached hereto and thereon to the best of my knowledge and belief.

Cashier

Directors.

SCHEDULE K—DEMAND DEPOSITS (EXCEPT BANK DEPOSITS) SUBJECT TO RESERVE

(Individual deposits that are 30 days or less or subject to less than 30 days' notice)

1. Individual deposits subject to check
2. Certificates of deposit (other than for money borrowed)
3. State, county, and municipal deposits
4. Other demand deposits

Total. (Must agree with Item 22 of "Liabilities")

SCHEDULE L—TIME DEPOSITS (deposits payable after 30 days or subject to 30 days' or more notice, or deposit in Federal Reserve Bank Acquisition Dr. and Postal Savings)

1. State, county, and municipal deposits
2. Deposits of other banks and trust companies located in:
   (a) United States
   (b) Foreign countries
3. Other time deposits:
   (a) Deposits evidenced by savings pass books
   (b) Certificates of deposit (other than for money borrowed)
   (c) Time deposits, open account, Christmas savings, school, etc.
4. Postal savings deposits

Total Time Deposits (must agree with Item 23 of "Liabilities")

SCHEDULE M—AMENDED STATEMENT OF "OTHER ASSETS"

MISCELLANEOUS,
Total (as per Sch. F, C. C.)

Total (must agree with Item 9 of "Assets")

SCHEDULE N—AMENDED STATEMENT OF "OTHER LIABILITIES"

Total (must agree with Item 31 of "Liabilities")

Charter No. [illegible] Fed. Res. Dist. 11

LOCATION, TITLE, AND NAMES OF PRESIDENT AND CASHIER OF BANK

| City and State | President | Cashier |
|---|---|---|
| Florida Falls, City Nat. | J. T. Howell | Orel [illegible] |

CONDITION OF THE BANK AT THE CLOSE OF BUSINESS ON [illegible]

| [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | None | None |

LIABILITIES

10. Capital stock paid in
16. Surplus
17. Undivided profits—net
18. Reserved for dividends, contingencies, etc.
19. Reserved for interest, taxes, and other expenses accrued and unpaid
20. Circulating notes outstanding
21. Due to banks, including certified and cashiers' checks and cash letters of credit and travelers' checks outstanding (except those shown in Schedule J)
22. Demand deposits (other than bank deposits) subject to check, including deposits due in 30 days or less or subject to less than 30 days' notice (must agree with Schedule K)
23. Time deposits (deposits payable after 30 days or subject to 30 days' or more notice) and Postal Savings deposits (must agree with Schedule L)
24. U. S. deposits (other than Postal Savings), including war loan deposit account and deposits of United States disbursing officers
25. Agreements to repurchase U. S. Government securities sold
26. Bills payable and rediscounts (must agree with Schedule B)
27. Acceptances of other banks and bills of exchange or drafts sold with indorsement of this bank (must agree with per contra Item 12)
28. (a) Amount owned by the bank on account of a joint loan agreement
    (b) The amount of the bank included or deducted not included in "loan on account"
29. Acceptances executed by order banks for account of this bank
30. Securities borrowed (must agree with per contra Item 13)
31. Other liabilities (must agree with Schedule N)

Total

[illegible] FORD, CASHIER.

I, [illegible], of the above-named bank, do solemnly swear that the above statement is true, and that the SCHEDULES attached hereto and above on back of this report fully and correctly represent the true state of the several matters therein contained and set forth, to the best of my knowledge and belief.

[illegible] Cashier

Subscribed and sworn to before me this [illegible] day of January, 1931.

M Lacy Notary Public

My Commission expires January 2, 1931

SCHEDULE A—NAMES OF OFFICERS AND DIRECTORS, LIABILITIES, IF ANY, AND SHARES OWNED

Par value of stock, per share, $ 200.00

Number of shares of stock issued 35,000

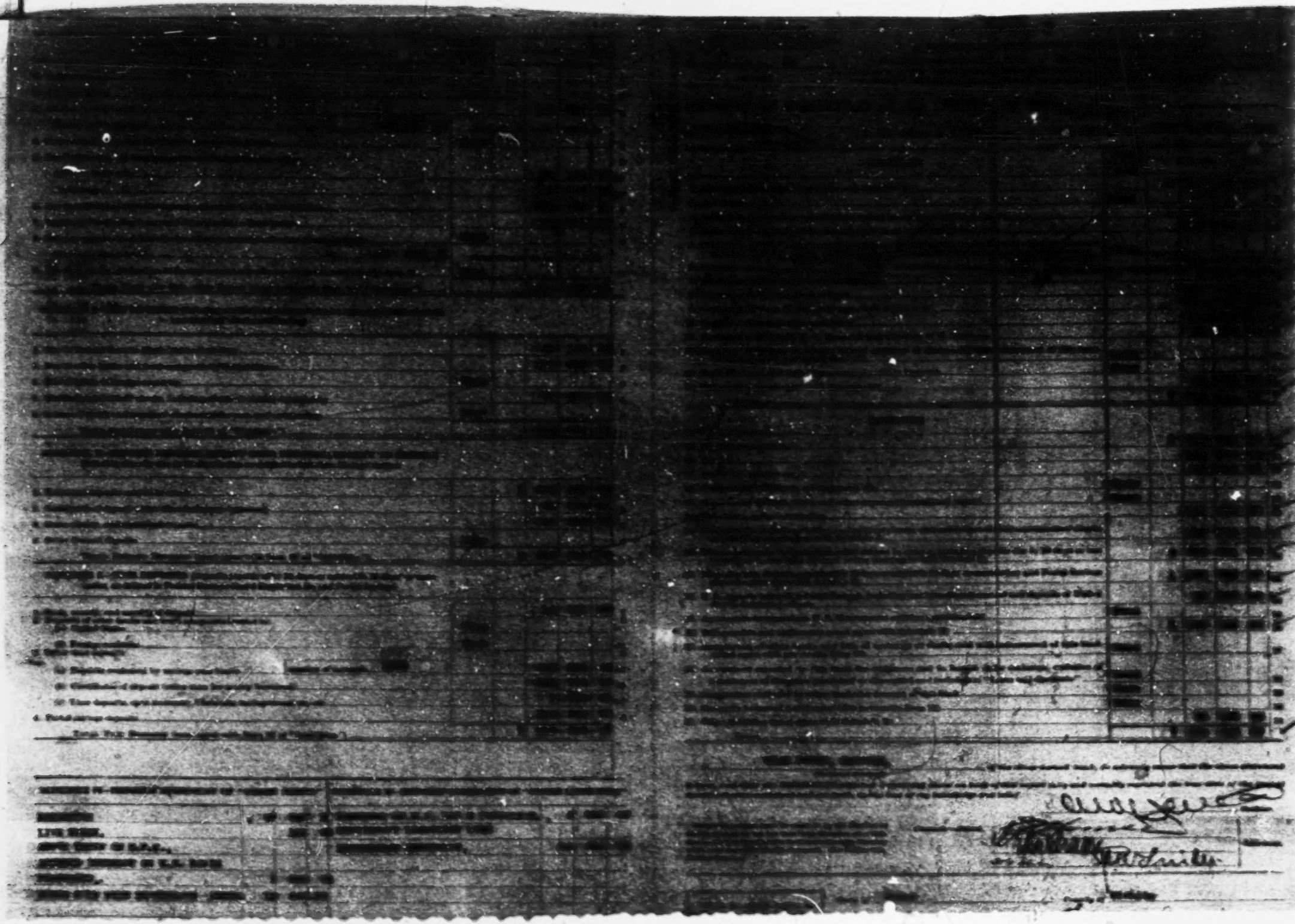
| Names of officers and directors | Offices | Amount of stock owned at present date | Amount of stock owned at previous date | Liabilities | Shares pledged |
|---|---|---|---|---|---|
| J. L. Russell, | President | [illegible] | [illegible] | [illegible] | [illegible] |
| [illegible] | [illegible]

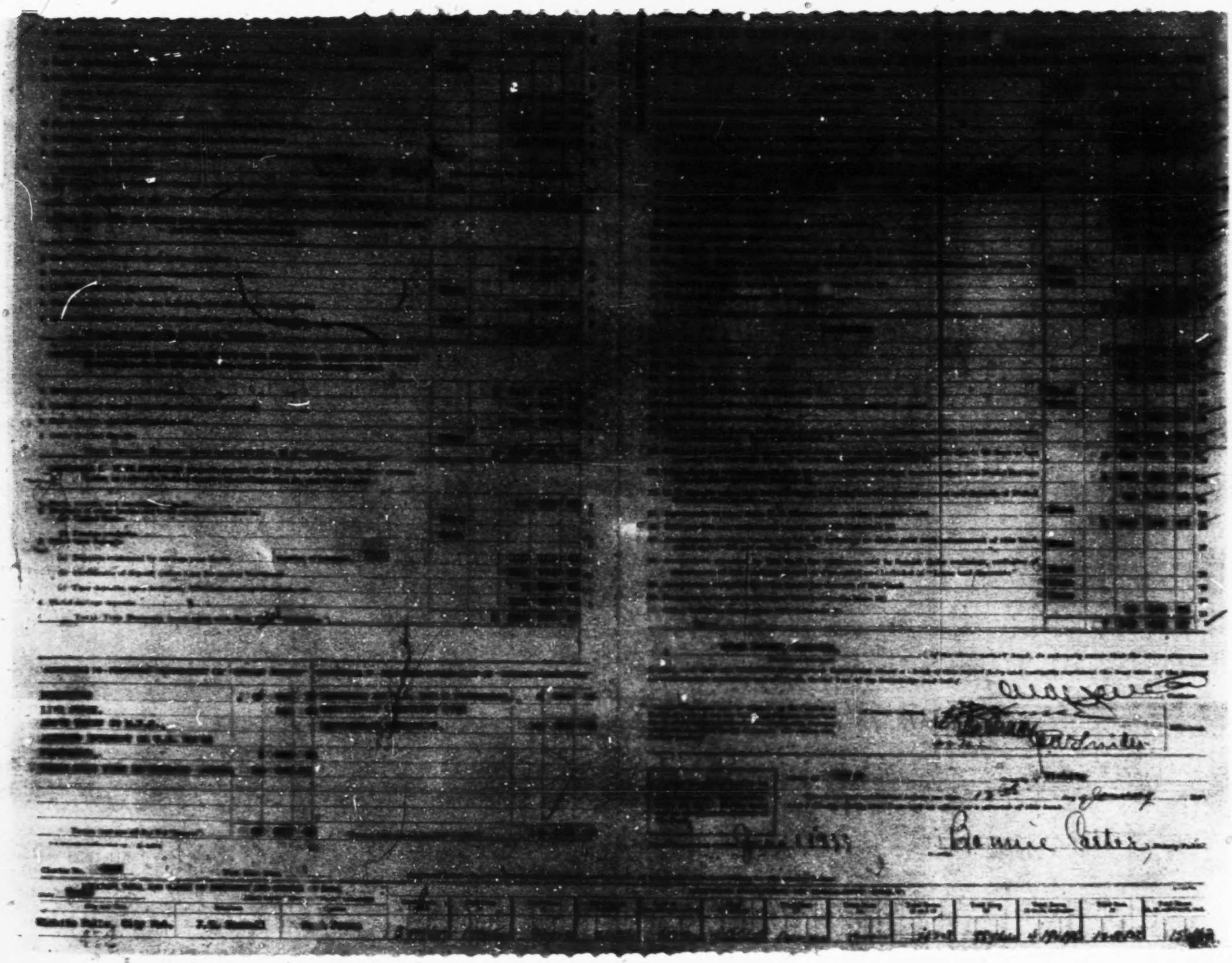
SCHEDULE B—LOANS EXCEEDING THE LIMIT PRESCRIBED BY SECTION 5200 OF THE REVISED STATUTES

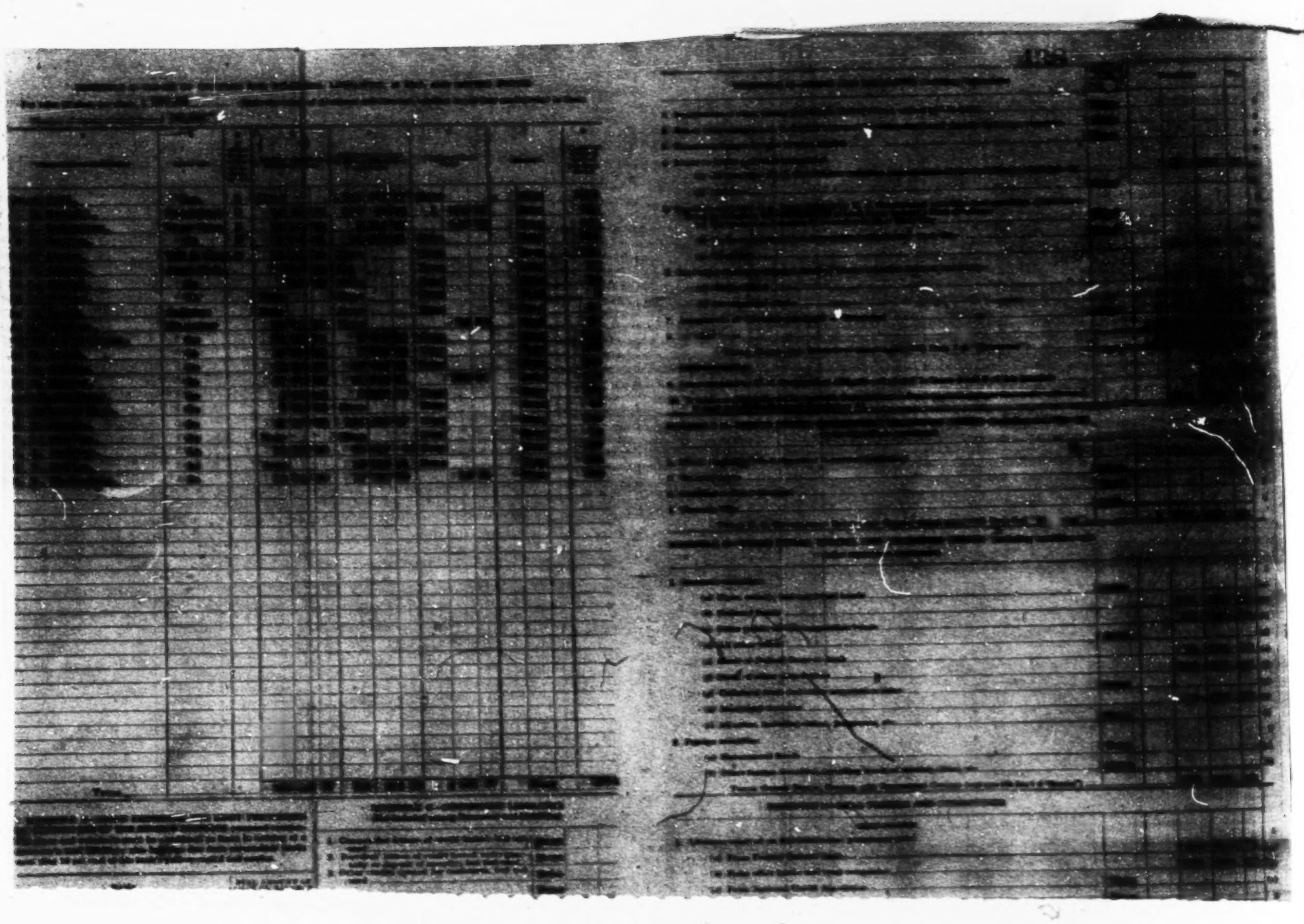
SCHEDULE C—CONTINGENT LIABILITIES

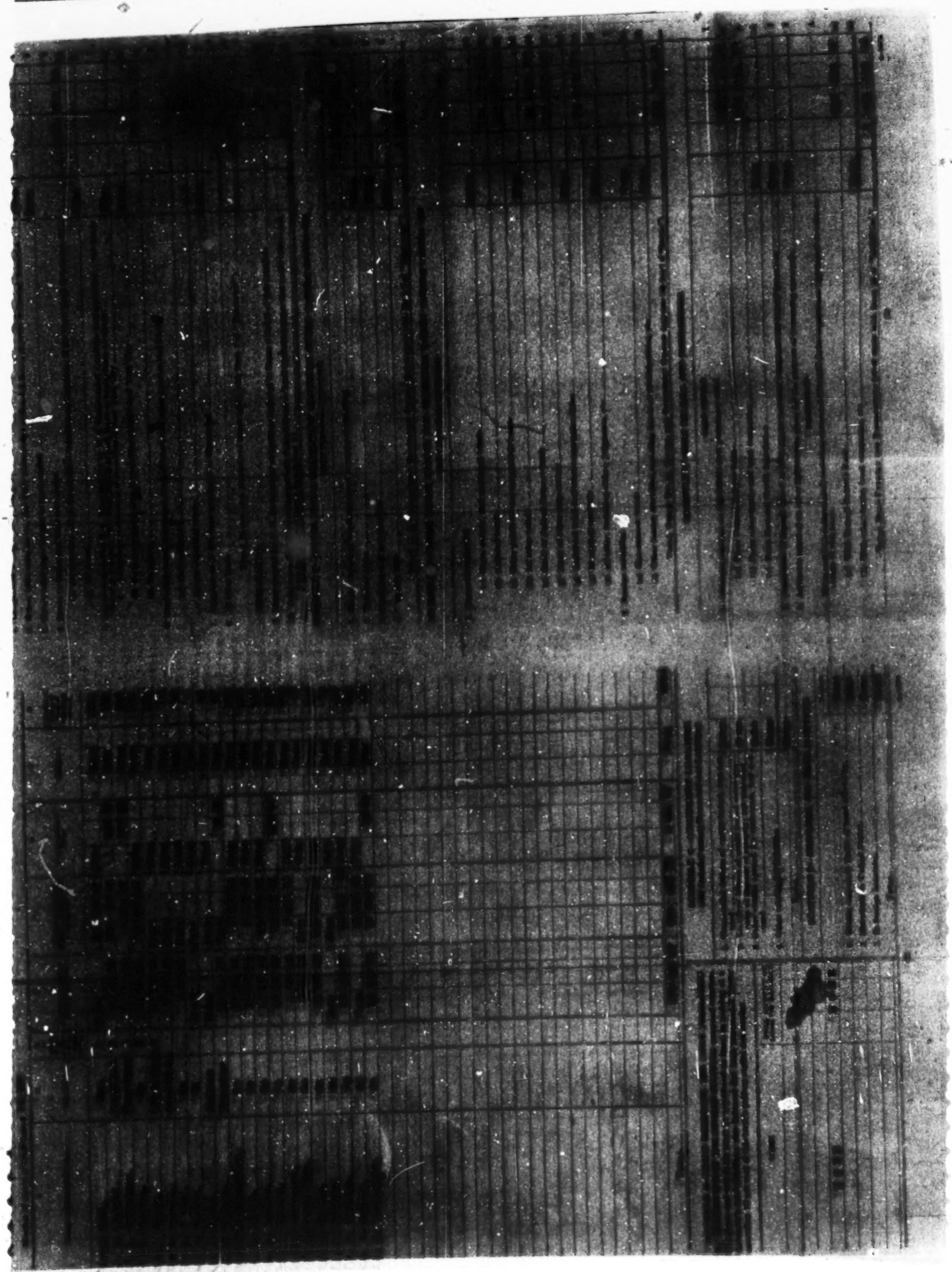
SCHEDULE D—BRANCHES AND BRANCH OFFICES

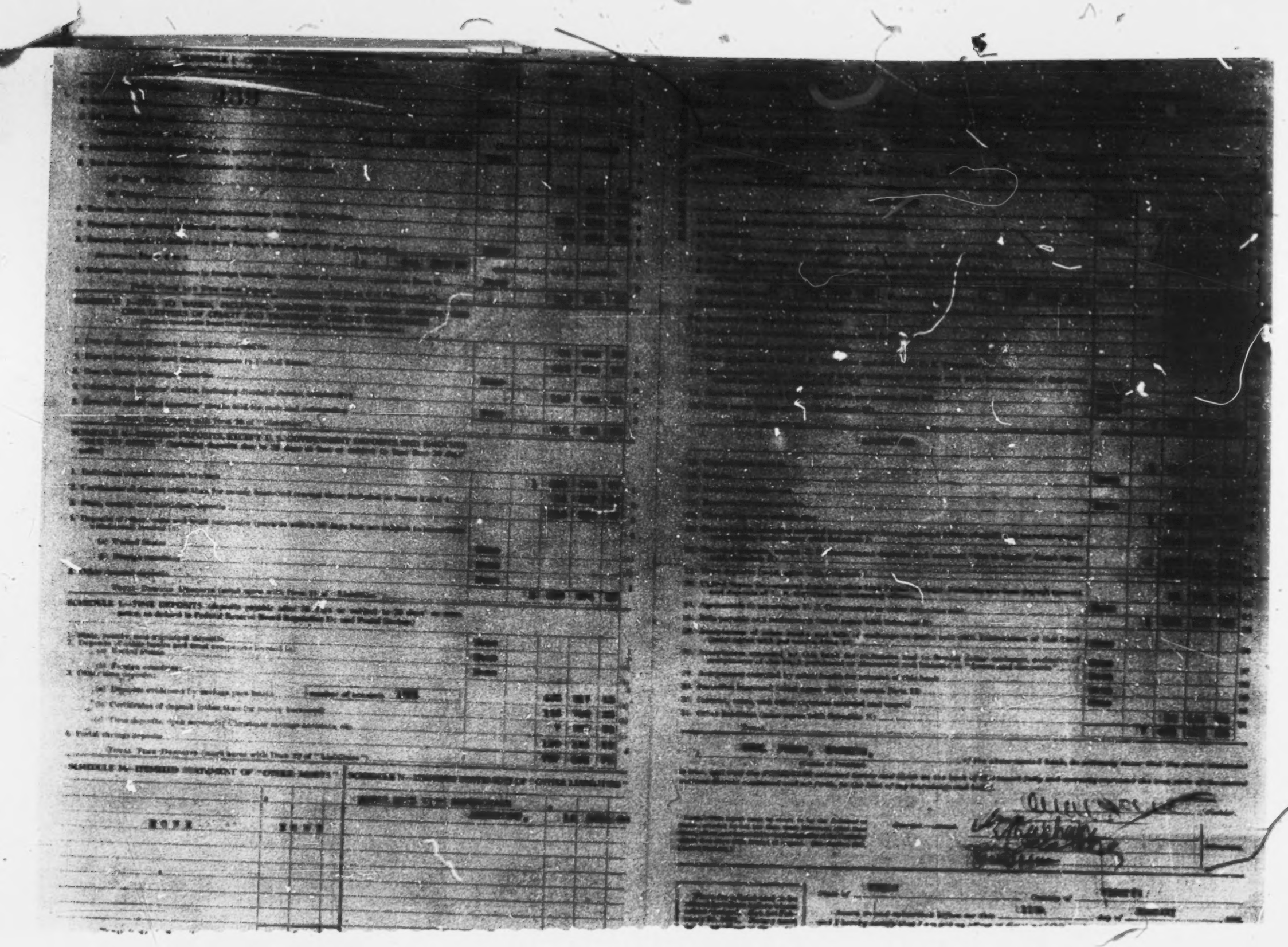
SCHEDULE H—BILLS PAYABLE AND REDISCOUNTS

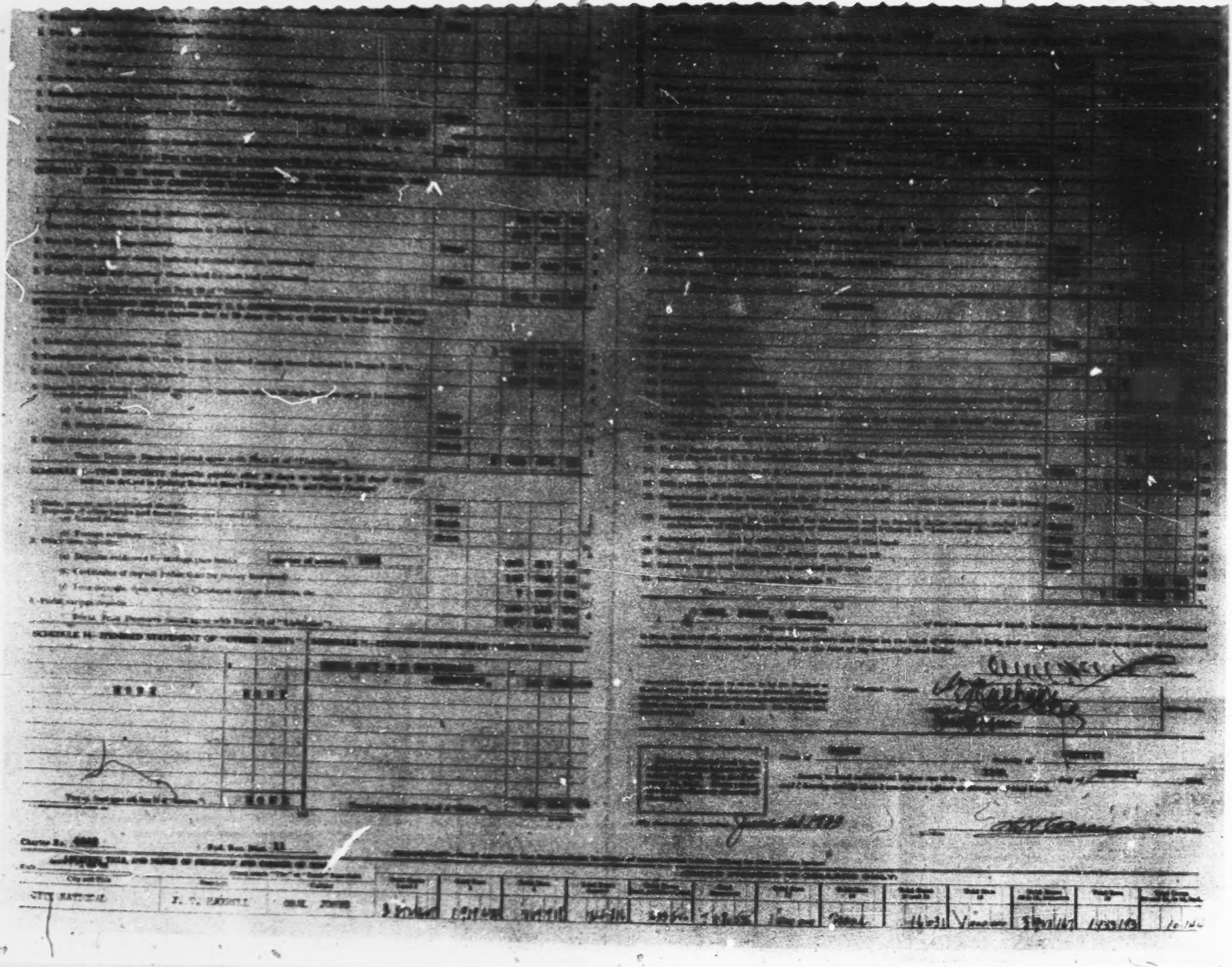


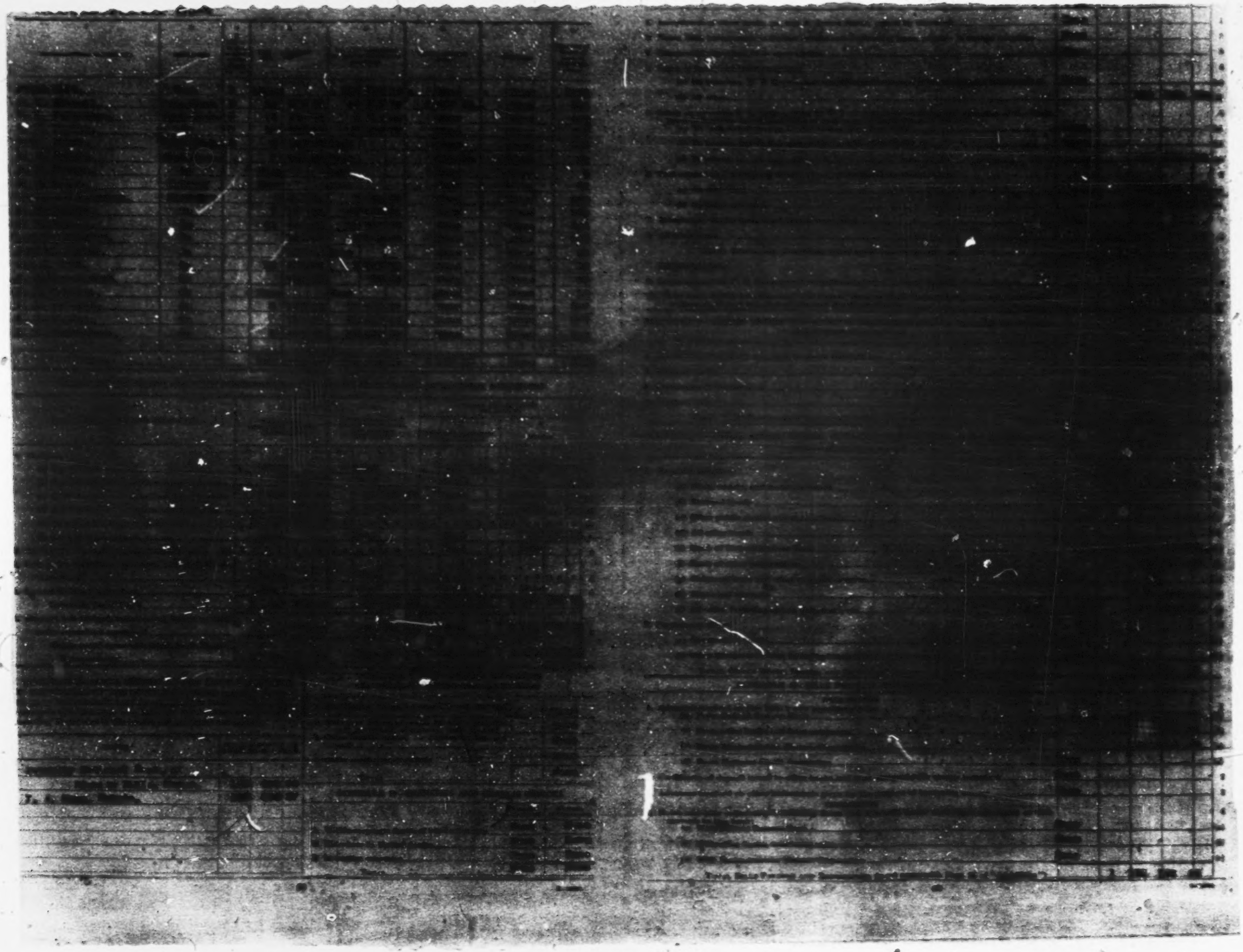












476 The Witness:

The date of the last statement issued in March, 1933, is January—it would be December, 1932, instead of January. There should be a report as of the date of the moratorium in 1933. We made a report as to the condition of the bank during or immediately following the moratorium. There is not any published report, they knew our condition, we had communicated it to them. I do not think I have any examination report, it was an informal report. The liquidating agent has made reports to the banking department since March 1, 1933. I was not liquidating agent, I was trustee of the bank, and continued to be its president. I am the president of the bank at this time, that is the old bank set up, the stock is still outstanding.

Here is the first report made after March 1, 1933.

Mr. Rogers:

We offer it in evidence.

(Marked "Defendant's Exhibit 5, as follows:)

TREASURY DEPARTMENT
Office of Comptroller of the Currency
Revised July 1, 1929

CHARTER No. 4248

442

# REPORT OF LIQUIDATING AGENT of The CITY National Bank of WICHITA FALLS, located at WICHITA FALLS, TEXAS

## for the Perjod ended December 31, 1933

| ASSETS | On hand beginning of period | Collections during period | Loans or assets compromised, sold or charged off during period | Increase in assets from property purchased, reclaimed, or from charged off items returned to the bank during period | Balance on hand end of period | LIABILITIES | Amounts due beginning of period | Liabilities paid during period | Increase in capital stock, surplus, or undivided profits from assets compromised, sold or charged off, and recoveries | Decrease in capital stock, surplus, or undivided profits from loans or assets compromised, sold or charged off, and recoveries during period | Balance due period ended |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 1. Loans and discounts, | 940,580.37 | 60,183.92 | 25,346.61 | 427,894.02 | 1,480,561.86 | 1. Capital stock paid in, | 2,000,000.00 | | | | 1,000,000.00 |
| 2. Overdrafts, | 00 | | | | | 2. Surplus fund, | 00 | | | | 00 |
| 3. U.S. bonds to secure circulation, | 2,000,000.00 | 997,625.00 | 2,375.00 | | 00 | 3. Undivided profits, | (Bal.Sht.) | | 127,136.33 | 442,672.98 | 00 |
| 4. Other U.S. bonds, | 00 | | | | 00 | 4. Reserved for taxes, etc., | 20,000.00 | 3,797.20 | | | 00 |
| 5. Premium on U.S. bonds, | 00 | | | | 00 | 5. Circulation account, | 1,000,000.00 | 1,000,000.00 | | | 00 |
| 6. Bonds, securities, etc., including premium on same, | 95,332.75 | 13,956.88 | | | 81,375.87 | 6. Due to Federal Reserve bank, | 00 | | | | 01 |
| 7. 5% amount bonds to ret. of Fed. Reserve bk., | 30,000.00 | 30,000.00 | | | 00 | 7. Due to national banks, | 00 | | | | 00 |
| 8. Banking house furniture and fixtures, | 507,000.00 | 150,000.00 | 357,000.00 | | 00 | 8. Due to State banks and bankers, | 00 | | | | 00 |
| 9. Other real estate owned, | 34,335.64 | 3,303.31 | 10,516.05 | 20,490.64 | 41,607.92 | 9. Individual deposits, | 00 | | | | 01 |
| 10. Due from Federal Reserve bank, | 00 | | | | 00 | 10. Savings deposits, | 00 | | | | 00 |
| 11. Due from national banks, | 261.43 | 261.43 | | | 00 | 11. Cashiers' and certified checks, | 00 | | | | 00 |
| 12. Due from State banks and bankers, | 1,631.04 | 1,631.04 | | | 00 | 12. Certificates of deposit, | 00 | | | | 00 |
| 13. Checks on other bank items, | 2,229.81 | 2,065.97 | | | 1,163.84 | 13. U.S. deposits, | 00 | | | | 00 |
| 14. Total cash on hand, | 00 | | | | 00 | 14. Postal savings deposits, | 00 | | | | 00 |
| 15. Fund against redemption bank, | 00 | | | | 00 | 15. Rediscounts with Federal Reserve bank, | 00 | | | | 00 |
| 16. Due from U.S. Treasurer, | 00 | | | | 00 | 16. Rediscounts and bills payable, | 669,641.84 | 211,736.36 | | | 865,896.64 |
| 17. Collected from interest, | 00 | 65,562.62 | | | 00 | 17. Liabilities other than those above stated, | 10,144.36 | 6,800.00 | | | 3,344.36 |
| 18. Collected from rents, | 00 | 3,941.43 | | | 00 | 3/P due CNB in T | | 397,504.02 | | | |
| 19. Collected from charged-off assets, | | 87,625.25 | | | 00 | O/D due CNB in T | | 13,600.02 | | | |
| Due from banks charged off on prior reports and not paid, | | | | | | | | | | | |
| Totals, | 2,610,741.01 | 1,356,027.32 | 395,237.66 | 527,894.72 | 1,480,561.86 | Totals, | 2,679,786.20 | 634,441.60 | 127,136.33 | 442,672.98 | 1,480,561.86 |

Total liquidating dividends paid to date, $ _____ percent

## RECEIPTS AND DISBURSEMENTS FOR PERIOD ENDED DECEMBER 31, 193

| RECEIPTS | | | DISBURSEMENTS | | |
|---|---|---|---|---|---|
| 1. Cash on hand at beginning of period, | | 00 | 1. Paid depositors, | | 00 |
| 2. Collected on loans and discounts, | 60 183 | 92 | 2. Paid to Reserve for tax accounts | 3 797 | 20 |
| 3. Collected from charged-off assets, U. S. & Miscellaneous Bonds | 57 625 | 25 | 3. Paid to Rediscounts & Miscel. Liab. | 218 135 | 38 |
| 4. Collected from [illegible] | | | | | |

# REPORT OF LIQUIDATING AGENT of The [illegible] National Bank of [illegible]

## for the Period ended December 31, 1933

| ASSETS | | | | | | LIABILITIES | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 1. Loans and discounts, | 940,680.37 | 60,183.92 | 29,345.51 | 427,894.05 | 1,478[illegible] | 1. Capital stock paid in, | 1,000,000.00 | | | | 1,000,000.00 |
| 2. Overdrafts, | 00 | | | | | 2. Surplus fund, | [illegible] | | | | 00 |
| 3. U.S. bonds to secure circulation, | 2,000,000.00 | 937,685.00 | 2,375.00 | | [illegible] | 3. Undivided profits, | [illegible] | | 127,138.30 | 442,672.96 | [illegible] |
| 4. Other U.S. bonds, | 00 | | | | 00 | 4. Reserved for taxes, etc., | 20,000.00 | 5,797.20 | | | 00 |
| 5. Premiums on U.S. bonds, | 00 | | | | 00 | 5. Circulating account, | 1,000,000.00 | 1,000,000.00 | | | 00 |
| 6. Bonds, securities, etc., (including premiums on same), | 95,382.73 | 13,956.65 | | | 81[illegible] | 6. Due to Federal Reserve bank, | .00 | | | | 00 |
| 7. [illegible] | 30,000.00 | 30,000.00 | | | 00 | 7. Due to national banks, | 00 | | | | 00 |
| 8. Banking house, furniture and fixtures, | 507,000.00 | 180,000.00 | 327,000.00 | | 00 | 8. Due to State banks and bankers, | 00 | | | | 00 |
| 9. Other real estate owned, | 34,335.64 | 3,903.31 | 10,516.05 | 22,490.64 | 1144[illegible] | 9. Individual deposits, | 00 | | | | 00 |
| 10. Due from Federal Reserve bank, | 00 | | | | 00 | 10. Savings deposits, | 00 | | | | 00 |
| 11. Due from national banks, | 261.43 | 261.43 | | | 00 | 11. Cashiers' and certified checks, | 00 | | | | 00 |
| 12. Due from State banks and bankers, | 1,031.04 | 1,031.04 | | | 00 | 12. Certificates of deposit, | 00 | | | | 00 |
| 13. Checks on other banks, | 2,229.81 | 1,065.97 | | | 1,163.84 | 13. U.S. deposits, | 00 | | | | 00 |
| 14. Cash on hand, | 00 | | | | 00 | 14. Postal savings deposits, | 00 | | | | 00 |
| 15. Fire insurance redemption fund, | 00 | | | | 00 | 15. Rediscounts with Federal Reserve bank, | 00 | | | | 00 |
| 16. Due from U.S. Treasurer, | 00 | | | | 00 | 16. Rediscounts and bills payable, | 669,641.84 | 211,[illegible] | | | 865,596.84 |
| 17. Collected from interest, | 00 | 65,569.62 | | | 00 | 17. Liabilities other than those above stated, | 10,144.36 | 6,800.00 | | | 3,344.36 |
| 18. Collected from rents, | 00 | 3,941.43 | | | 00 | B/P due CNB in 7 # | | 397,594.03 | | | |
| 19. Collected from charged-off assets, | | 57,625.25 | | | 00 | O/D due CNB in # | | [illegible] | | | |
| 20. Other assets not specified, | | | | | | | | | | | |
| Due for Items charged off, | | | | | | | | | | | |
| Total, | 3,610,741.04 | [illegible] | 369,234.56 | 527,894.72 | 1,480,561.86 | Total, | [illegible] | [illegible] | 127,138.30 | 442,672.96 | 1,480,561.86 |

Total liquidating dividends paid to date, $ ..... percent

## RECEIPTS AND DISBURSEMENTS FOR PERIOD ENDED DECEMBER 31, 193[illegible]

| RECEIPTS | | | DISBURSEMENTS | | |
|---|---|---|---|---|---|
| 1. Cash on hand at beginning of period, | | 00 | 1. Paid depositors, | | 00 |
| 2. Collected on loans and discounts, | 60 183 | 92 | 2. Paid to Reserve for tax accounts | 3 797 | 20 |
| 3. Collected from charged-off assets, | 57 625 | 25 | 3. Paid to Rediscounts & Miscel. Liab. | 218 135 | 38 |
| 4. Collected from U. S. & Miscellaneous Bonds Federal Reserve Stock | 1 041 581 | 65 | 4. Paid to Circulation | 1 000 000 | 00 |
| 5. Collected from Banking House, Fixtures & Real Estate | 153 903 | 31 | 5. Paid liquidating Expense | 43 436 | 40 |
| 6. Collected from Banks & Cash Items | 2 358 | 44 | Percent dividend on capital stock, | | |
| 7. Collected from Interest | 65 569 | 62 | Percent dividend on capital stock, | | |
| 8. Collected from Rents | 3 941 | 43 | 6. Paid on acquired Assets | 119 794 | 64 |
| Total, | 1 385 163 | 62 | Total, | 1 385 163 | 62 |

I certify the above to be correct.

Dated May 15th, 1934

[illegible]
Liquidating Agent

478 The Witness:

There was no other report in writing made to the banking department, between the last two reports that I have offered in evidence.

I just went over the affairs with the National Bank Examiner locally, and with the chief bank examiner, we went to see him. He lives in Dallas, Texas. We made no report to him at all. The next report of the liquidating agent was December 31, 1934, and the next one was December 31, 1935.

Mr. Rogers:

We offer these two instruments in evidence.

(Marked "Defendant's Exhibit 6 & 7" as follows:)

444

EE 6

REPORT OF LIQUIDATING AGENT of The FIRST National Bank of [illegible] located at [illegible]

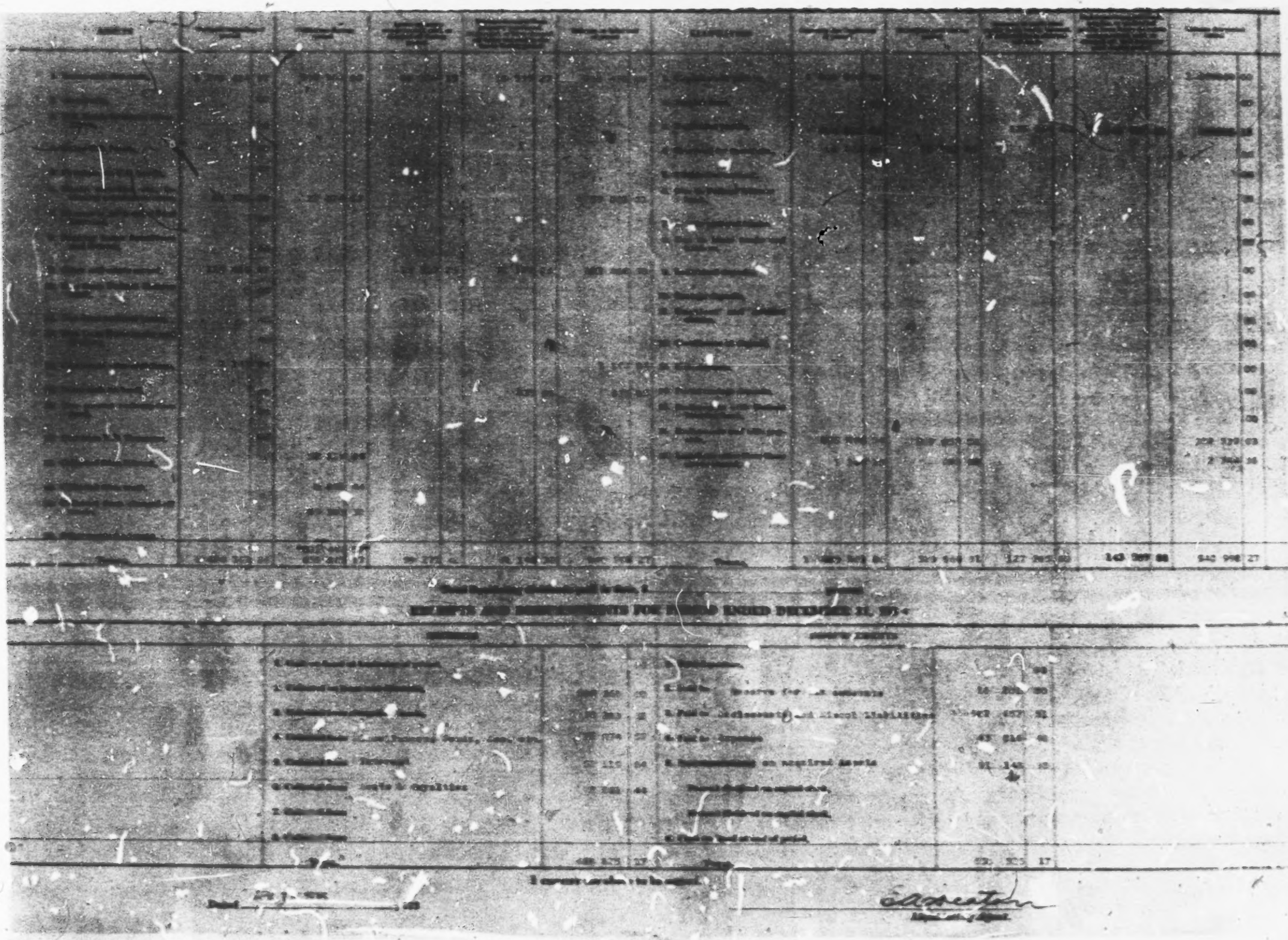
for the Period ended December 31, 19[illegible]

| ASSETS | | | | | | LIABILITIES | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 1. | | | | | | 1. | | | | | 1,000,000 00 |
| 2. | | | | | | 2. | | | | | |
| 3. | | | | | | 3. | | | | | |
| 4. | | | | | | 4. | | | | | |
| 5. | | | | | | 5. | | | | | |
| 6. | | | | | | 6. | | | | | |
| 7. | | | | | | 7. | | | | | |
| 8. | | | | | | 8. | | | | | |
| 9. | | | | | | 9. | | | | | |
| 10. | | | | | | 10. | | | | | |
| 11. | | | | | | 11. | | | | | |
| 12. | | | | | | 12. | | | | | |
| 13. | | | | | | 13. | | | | | |
| 14. | | | | | | 14. | | | | | |
| 15. | | | | | | 15. | | | | | |
| 16. | | | | | | 16. | | | | | |
| 17. | | | | | | 17. | | | | | |
| 18. | | | | | | 18. | | | | | |
| 19. | | | | | | 19. | | | | | |
| 20. | | | | | | 20. | | | | | |
| 21. | | | | | | 21. | | | | | |
| 22. | | | | | | 22. | | | | | 850 539 03 |
| 23. | | | | | | 23. | | | | | 2 746 36 |
| 24. | | | | | | 24. | | | | | |
| 25. | | | | | | 25. | | | | | |
| 26. | | | | | | 26. | | | | | |
| Totals | | | | | | Totals | | | | | 940 998 27 |

Total Operating Gain or Loss to Sec. 8 [illegible]

RECEIPTS AND DISBURSEMENTS FOR PERIOD ENDED DECEMBER 31, 19[illegible]

| RECEIPTS | | DISBURSEMENTS | | |
|---|---|---|---|---|
| 1. | | 1. | | |
| 2. | | 2. Dividends [illegible] reserve for tax accounts | 10 202 | 00 |
| 3. | | 3. Public deposits & [illegible] liabilities | 907 657 | 31 |
| 4. Collections [illegible] and loans, etc. | | 4. Bonds disposed | 43 816 | 00 |
| 5. Collections [illegible] | | 5. Purchasing of acquired assets | | |



445

Dec 27

# REPORT OF LIQUIDATING [illegible] of The [illegible] National Bank of [illegible], [illegible]

For the Period ended December 31, 19[illegible]

| Assets | | | | | | Liabilities | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 1. Loans and discounts | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | 1. Capital stock | [illegible] | | | | |
| 2. Overdrafts | | | | | | 2. Surplus | | | | | |
| 3. U. S. bonds | | | | | | 3. Undivided profits | [illegible] | | | | |
| 4. Premiums on U. S. bonds | | | | | | 4. Amount due to banks, etc. | | | | | |
| 5. Bonds, securities, etc., other than bonds pledged as collateral | 10961 35 | 21404 97 | 30387 03 | | 7912 65 | 5. Due to National Banks | | | | | |
| 6. Bonds pledged as collateral for circulation | | | | | | 6. Due to State banks and bankers | | | | | |
| 7. Banking house (including vault) | | | | | | 7. Due to other than banks and bankers | | | | | |
| 8. | | | | | | | | | | | |
| 9. Due from National Banks (not reserve agents) | 371446 98 | 7341 34 | 48996 30 | 3421 08 | 111813 42 | 8. Individual deposits subject to check | | | | | |
| 10. Due from approved reserve agents | | | | | | 9. Demand certificates of deposit | | | | | |
| 11. Due from State Banks and Bankers | 435 45 | | | 3334 53 | 3769 98 | 10. Certified checks | | | | | |
| | | | | | | 11. Cashier's checks outstanding | | | | | |
| 12. | | | | | | 12. | | | | | |
| 13. Checks and other cash items | 3303 94 | | 3303 94 | | | 13. U. S. deposits | | | | | |
| 14. Total cash on hand | | | | | | 14. Deposits of U. S. disbursing officers | | | | | |
| 15. Due from Federal Reserve Bank—5% Redemption Fund | | | | | | 15. Deposits of United States Treasurer (postal savings) | | | | | |
| 16. Outlawed from Circulation | | 88295 00 | | | | 16. Reserve with legal depositaries | 358 1884 08 | 99 7794 50 | | | 3958 0678 58 |
| 17. Outlawed from Redemption | | 2104 50 | | | | 17. Dividends unpaid | 0 [illegible] | | | | 0 [illegible] 50 |
| 18. Outlawed from Circulation Account of Banks | | 87549 50 | | | | | | | | | |
| 19. Other assets (not incl. | | | | | | | | | | | |
| Totals | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | Totals | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] |

Total Liabilities (Deduct call in Item 8) [illegible]

[illegible]

REPORT OF LIQUIDATING AGENT of The ... for the Business Day of ... for the Period ending December 31, 19..

| ASSETS | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 1. Cash on hand | | | | | | | | | | | |
| 2. Deposits | | | | | | | | | | | |
| 3. U. S. bonds | | | | | | | | | | | |
| 4. Pledged as U. S. bonds | | | | | | | | | | | |
| 5. Stocks, securities, etc., for trading purposes (not pledged) | 59261 31 | 21404 67 | 30382 62 | | 7525 65 | | | | | | |
| 6. Stocks and bonds of agents of closed banks, etc. | | | | | | | | | | | |
| 7. Stocks, bonds, investments and securities | | | | | | | | | | | |
| 8. Other real estate owned | 171496 00 | 7352 54 | 44098 10 | 1811 00 | 171896 40 | | | | | | |
| 9. Due from National, State and private banks | | | | | | | | | | | |
| 10. Exchanges for clearing house | 420 00 | | | 1700 63 | 1700 63 | | | | | | |
| 11. Due from other banks and bankers | | | | | | | | | | | |
| 12. Checks and other cash items | 2122 94 | | 3103 84 | | | | | | | | |
| 13. Total cash on hand | | | | | | | | | | | |
| 14. Due from Federal Deposit Insurance Corporation | | | | | | | | | | | |
| 15. Collateral loans (detail) | | 66270 00 | | | | | | | | | |
| 16. Collateral loans (real) | | 7500 00 | | | | | | | | | |
| 17. Collateral loans (personal and other) | | 237469 00 | | | | | | | | | |
| 18. Other assets (not cash) | | | | | | | | | | | |
| Totals | 232700 27 | 339976 21 | 107047 23 | 67250 23 | 7 [illegible] 29 | | | | | | |

Total liabilities (deposits paid or [illegible] ... [illegible]

RECEIPTS AND DISBURSEMENTS FOR PERIOD COVERED BY THIS REPORT

| RECEIPTS | | DISBURSEMENTS | |
|---|---|---|---|
| 1. Balance on hand (last report) | | 1. Salaries | |
| 2. Deposits | | 2. Rent | |
| 3. Collected on loans | | 3. Taxes | |
| 4. Collected on bonds | | 4. Insurance | |
| 5. Collected on stocks | | 5. Other expenses | |
| 6. Collected on other assets | | 6. Dividends | |
| 7. Interest and discount | | 7. Interest | |
| 8. Collected from other sources | | 8. Other disbursements | |
| Totals | | Totals | |

481 The Witness:

Our 1936 report has not been made.

The bank's deposits in June, 1929 were $8,063,069.30. In 1924, our deposits ran, in round figures, $10,000,000.00. In the four calls in 1925, exceeded ten million dollars. In 1926, in the first call, in 1927, all exceeded $10,000.00. The first two calls in 1927 were nine million dollars plus. The last call in 1927 was ten million dollars plus. The first call in 1928 was nine million, nine hundred and eighty-three thousand dollars. The second call in 1928 was $10,000,000.00 plus. The next three calls were nine million dollars plus, and in 1929 the first call was $9,700,000.00, the second call was $8,000,000.00, the third call was $7,000,000.00, the fourth call was $8,600,000.00. In 1930 the first call was $8,000,000.00, the second call was $9,800,000.00, the third call was $6,742,000.00, the fourth call was $6,736,000.00. In 1931 the first call was $5,853,000.00, the second call $4,891,000.00, the third call $4,190,000.00. The first call in 1932, $3,370,000.00; the second call $3,474,000.00, the third call $3,921,000.00. The first call in 1933, $2,864,000.00, and in October of that year, $3,000,000.00. The last call in 1932 was the old bank, $3,921,000.00.

We had to charge off paper from time to time and that was not included in our report. There was a continuous withdrawal of funds from our bank after the financial break in 1929, until we organized the new bank. At that time there was a great deal of fear in this community in respect to the solvency of banks, and in conference with the directors, I, as one of the di-

482 rectors, considered that it would be impossible to reopen the old bank after this holiday, would prove disastrous. It considered that it would be impossible to keep that bank open and meet the demands that the public would make upon it. We then determined that the best thing to do would be to liquidate voluntarily the old bank and incorporate a new bank, which we did. In October, 1931, we determined that it would be imperative to put new money into the bank, which was a contribution to cash and not to capital.

I have the original books and records of the old bank before me, from which I can testify as to cash on hand. There was money borrowed from the bank. The assets of the bank sold under the repurchase agreement which were the obligations of the bank, plus the guarantee or underwriting of the directors and principal stockholders. Before I would feel justified in making an answer as to all of these transactions, I would have to investigate the records more thoroughly, if you want a specific date, I can get that for you. I will say that I, as a director and stockholder, did not join the other directors and stockholders in obtaining money from any other banks for the purpose of placing it at the disposal of the old bank. There was never a deposit made by the owners of this bank, or the old bank, for the benefit of furnishing it cash—what I am trying to get at—there was never any contributions by persons to the cash situation, except in an indirect manner, which was the underwriting.

I did join with the directors and other individuals
483 in borrowing money for the bank—that is, I underwrote the bank's obligations. As to the transaction with the First National Bank of this City, I will state that the City National Bank sold to certain individuals certain assets of this bank which were bills receivable of this bank, I can get that date for you later. I can get for you the transaction with the First National Bank of Wichita Falls, First National Bank in Dallas, and the Federal Reserve Bank, and will do so during the taking of this testimony.

The Marlborough note, which has been introduced in evidence here, was a renewal of the pre-existing indebtedness on the Marlborough Addition. I was an indorser on that note, as was G. W. Peckham, and throughout his litetime he continued as such.

I have the checks here showing all payments that I made, as a contributing partner to the liabilities of, or into the account of that partnership from its purchase to date, of the Marlborough Addition or the Texas Investment Company. I will give you such as I have,

September 22, 1925, check to Highland Irrigation Company, $3,869.25. That was cash payment on fifty-one acres of land, the check was paid September 26, 1925. The next is November 20, 1925, $250.00, payable to George Peckham, and the memoranda says, "Expense funds, Kemp and others Addition." That was paid November 21, 1925. The next is January 11, 1926, check payable to Highland Irrigation Company, $454.50; the memorandum says cash consideration one-fourth interest Highland lots. That is paid on January 12, 1926. The next one, February 1, 1926, $150.00, payable to the
484 Marlborough Addition assessment for expenses paid on February 4, 1926. May 8, 1926, $3,750.00, payable to Marlborough Addition, paid on May 10, 1926. May 19, 1926, $2,000.00, payable to Marlborough Addition, memorandum, "Assessments for improvements" paid on May 19, 1926. July 23, 1926, $3,000.00, payable to the Marlborough Addition, paid June 1, 1926. October 14, 1926, $4,797.87, payable to the Highland Irrigation Company, paid October 19, 1926. Totaling for my one-fourth, $18,271.62. I have paid no other amounts, than above mentioned, to my knowledge, upon the debts of the Texas Investment Company or the Marlborough Addition, or to its account, or for its benefit. The Marlborough partnership, or the corporation, Texas Investment Company, never paid back to me any sum of money of anv kind or character. I have not paid my part of the Texas Investment Company note.

I have before me the liability ledger of the Texas Investment Company. The date of the last entry is February 2, 1931, appears to be the renewal of a note, $21,500.00. Credit was applied upon that account for the sale of securities, December 29, 1930.

There has never been a new note made after June 29, 1930, to my knowledge; I have not indorsed or signed a note since that time. So far as the liability of the corporation now stands, it is upon that note. I have been liable upon that note ever since 1930, and long
485 prior thereto, and have not paid any part of it since the making of this last note. I listed that

note upon my statement to the banking department, as a liability of a director of the bank—it is included in the indirect liabilities—that item is classed against me.

The old and the new bank entered into a written contract in March or June, 1933, and copies of that contract are attached to the pleadings. There has never been a modification, or a change of any kind, or an extension of any character made between the two banks in respect to that contract since its making. The rights of the two banks, then and now, are reflected by the terms of that original agreement, except as the parties have dealt with each other under its terms.

Mr. Peckham and I were good friends. I considered him a good business man. In the fall of 1925, Mr. Peckham and I became associated in developing the Marlborough Addition; immediately before or after, I don't remember which, we had several trades whereby we were associated in business.

This Marlborough Addition which we started in the fall of 1925, was a tract of land adjacent to the City of Wichita Falls, and the four of us acquired it for the purpose of developing it as a residential addition to the city, sub-dividing it and paving it, and laying sewers, lighting, etc., and to participate, as our interests appear, in whatever net profit the thing might make. Having bought it in 1925, we platted it as an addition
and filed the plat of record, and begun its subdi-
486 vision and improvement with the view of sell-
ing off the lots.

In November, 1925, Mr. Basham, my fellow banker, and myself, owned what is generally known as the Stephens Royalty, and in November, 1925, I think it was, we sold Mr. Peckham an interest in that royalty. We took cash and notes for that interest.

Then in December, we bought what is known as the Curlee tract, it was forty acres adjacent to the City of Wichita Falls, on the south, the Holiday tract in the Taylor Addition. I had an undivided one-half interest, and Mr. Peckham had the other half. Mr. Basham

did not have any interest in that tract. The date of the deed, to that tract, is January 8, 1926. I think prior to that date we had a contract with reference to the purchase of that tract, subject to title, that contract was probably dated thirty days before January 8, 1926. I have here the deposit that went to Mr. Curlee's account, which is made up of J. T. Harrell's check, and Mr. Peckham's check, a total of $4,749.10, cash consideration. I do not have here the amount I paid. The date of the deposit slip to Mr. Curlee's account is January 9, 1926.

As I have stated, in the early days here people were making lots of money and large deposits, but they became somewhat more conservative at a later date, they were more conservative in 1925-26, than they were in 1919-20, and I think the bankers were watching loans a little more closely than they were watching them during the flush period. I have had many a customer of the bank talk to me about an investment, however,
487 it is not necessarily true that the closer the relationship between the banker and the customer and the confidence you have in him, the better acquainted you are with the individual and the confidence you have in him, the less you question his acts.

I usually waited on Mr. Peckham in the application of loans, the loans were passed upon by the Board of Directors or discount committee. Mr. Peckham was an active trader.

I have asked customers of the bank when they would make an application for a loan, what they intended to do with the money. I never asked George Peckham that, that I recall, I might have. I don't know whether he would have told me or not. Mr. Peckham never refused to answer any question I asked him about his business. I might have asked him some questions about his business.

I don't recall who conducted the negotiations for the sale of the first interest in the Stephens Royalty, we were not really offered the property for sale. Then

we were later approached by him for the purchase of the remaining interests that we owned. I could not state when the negotiations first begun, it was concluded as of January 1, 1926, and I suppose the negotiations begun a short time before that. The date of the second conveyance is January 1, 1926, it was concluded and acknowledged on the 28th of January, 1926. I do not know when the first payment was made, the delivery of the deed was in the interim.

Mr. Rogers:
We offer the instrument in evidence.

(Marked "Defendant's Exhibit 8" as follows:)

488 DEFENDANT'S EXHIBIT 8.

Mineral deed dated January 18, 1926. J. T. Harrell and C. E. Basham, grantors, Wichita Royalty Company grantee. Consideration $10.00 and other valuable considerations.

Conveying an undivided 1/4 interest in and to 1/8 part of all of the oil and gas produced and saved from the south 40 acres of the North 60 acres of the West 1/2 of the Northeast 1/4 of Section 83, Block 14, H & T C R R Company, Survey, in Wilbarger County, Texas, the same being an undivided 1/4 of the 1/8 overriding royalty reserved in the assignments as above referred to by Daniel Bond, and is to be delivered free of costs in the pipe line to the grantee, their successors or assigns; it being the intention of the grantors herein to each assign to Wichita Royalty Company, an undivided 1/8 interest in and to the 1/8 overriding royalty as above described, thereby conveying unto the said grantee an undivided 1/4 interest in and to the 1/8 overriding royalty as above described.

To Have and to Hold Unto the said Wichita Royalty Company, their successors and assigns, an undivided 1/4 interest in and to the 1/8 overriding royalty in and to the above described land, together with all and singular the, rights and appurtenances in anywise belonging thereto.

Acknowledged January 28, 1926.

Filed for record February 4, 1926.

Recorded in Volume 103 page 273, Deed Records Wilbarger Co.

489 Bearing $26.00 in documentary stamps.

The Witness:

On the date of that deed, I did not know how much Peckham and I owed upon the indebtedness incurred in the Marlborough transaction, the deferred payments due the Highland Irrigation Company, but I can get that information for you. I have before me a copy of a deed, September 19, 1925, Highland Irrigation Company, J. A. Kemp and others, which includes W. H. Peckham, G. W. Peckham, J. T. Harrell, which reflects six notes of $7,-738.30 each, totaling $46,429.80, which was owed by the four of us. The second deed, dated January 8, 1926, deed from the Highland Irrigation Company to J. A. Kemp and others. W. H. Peckham, G. W. Peckham, J. T. Harrell, six outstanding notes, $909.00 each, a total of $5,-454.00 making a total owed by the four of us as of that date, $51,883.80, as reflected by those deeds.

Regardless of the total amount, I will say that Mr. Peckham, along with W. H. Peckham, and Mr. Kemp, and myself, were generally obligated upon a substantial sum of money due the Highland Irrigation Company.

According to the liability ledger of the City National Bank of Wichita Falls, on January 1, 1926, George Peckham owed the bank $28,050.00. He owed Mr. Basham

and myself $5,000.00 upon notes executed for his purchase of the first interest in the Stephens Royalty; that $5,000.00 indebtedness was evidenced by a note which he gave me when he first bought that, and had a little accrued interest on it. On that date I owed the bank $7,500.00, which was increased on January 11, to $10,560.00, and on January 19, the $15,574.44.

490 The consideration for the mineral interest conveyed to the Wichita Royalty Company as shown by Plaintiff's Exhibit 8, was $22,207.00 in cash and notes, and the conveyance of G. W. Peckham's interest in the forty acre tract known as the Curlee tract. $4,749.10 was the amount of cash that Mr. Peckham and I paid Walter Curlee and some notes for the Curlee tract; one-half of that cash was supposed to be paid by me and one-half by Mr. Peckham. In trading with Mr. Peckham for the sale of this interest, described in the deed to the royalty company, the memorandum would indicate that we paid $3,567.75 for it. I testified upon the original trial of this case in the state Court, and if the records show, I probably testified that I took that property in for approximately twenty-four hundred dollars, that was the information furnished me by Mr. Duncan, he kept my record. The deed from Curlee to Peckham, dated January 8, 1926, and filed for record 1-11-26, reflect a consideration of $7,628.00. The Wichita Royalty Company did not owe the bank any money on January 1, 1926. As reflected by the ledger sheet, Mr. Peckham's beginning balance as of January 4, 1926, was $878.70. A copy of the deposit ticket reflects that G. W. Peckham's account was credited with five thousand dollars, January 4, 1926.

I handled the negotiations on the part of the bank, and Mr. Peckham on the part of the Wichita Royalty Company, which show January 18, 1926, $15,000.00, and on March 1, 1926, $25,000.00; those are the originals out of which the personal note of $22,000.00 arose.

491 I don't know whether George Peckham indorsed those obligations or not, the record will show.

The records kept at that time did not generally reflect the indorsers, the system changed and began to reflect the indorsers July 15, 1927. When the record did begin to show the indorsements of Mr. Peckham, he appeared as the indorser on this obligation. I don't remember whether I testified in the other trial that Mr. Peckham was an original indorser, or not. I considered Mr. Peckham personally liable upon the obligations at all times, because of a membership in the joint stock association. I would state that I do not have any independent recollection of these transactions, except what the books and records reflect. I have delegated an employee of the bank to inquire into and work up the information as disclosed by the books and records of the bank, as to the transactions involved in this controversy, both with respect to my personal affairs and of the bank, and the other parties mentioned in the litigation. That person is Mr. H. H. Carson, and he could answer these questions better than I can.

Re-Direct Examination.

By Mr. Boone:

I have had to refer to the records in order to answer these questions of Mr. Rogers with reference to different transactions involved herein; during this time I was employed in looking after the general affairs of the bank, and not the details. I was interrogated
492 concerning some figures beginning in 1929, in 1923, and on down to the organization of the new bank, those figures show in general the aggregate total deposits on certain dates of the call by the comptroller of the currency, in published statements. This statement here reflects the fluctuations in the deposits on the call dates as shown in that first column.

Mr. Boone:

We offer in evidence the tabulation of deposits, as shown, which reflect the deposits of the City National

Bank from the call of 3-4-19, down to the organization of the new bank. Only offering down to 12-31-32. This being the deposits of the old bank and being the first column on the page.

(Instrument marked "Defendant's Exhibit 17" and reading as follows:)

493 DEFENDANT'S EXHIBIT 17.

Deposits of City National Bank at Various Calls for Published Statements by the Comptroller of the Currency.

| | |
|---|---|
| 3- 4-19 | $ 7,625,913.21 |
| 6-30-19 | 10,363,039.95 |
| 9-12-19 | 12,417,268.12 |
| 11-17-19 | 14,140,857.76 |
| 12-31-19 | 14,126,451.76 |
| 2-28-20 | 13,735,071.89 |
| 5- 4-20 | 19,233,885.87 |
| 6-30-20 | 18,785,003.98 |
| 9- 8-20 | 16,608,149.27 |
| 494 11-15-20 | 14,230,059.48 |
| 12-29-20 | 14,476,799.01 |
| 2-21-21 | 11,884,454.08 |
| 4-28-21 | 9,868,781.13 |
| 6-30-21 | 8,504,910.22 |
| 9- 6-21 | 7,645,450.94 |
| 12-31-21 | 8,246,688.97 |
| 3-10-22 | 8,628,921.35 |
| 6-30-22 | 8,510,095.79 |
| 9-15-22 | 8,404,614.36 |
| 12-29-22 | 8,227,630.28 |
| 4- 3-23 | 7,722,280.97 |
| 6-30-23 | 6,842,685.89 |
| 12-31-23 | 7,659,346.62 |
| 3-31-24 | 7,042,032.87 |

| | | |
|---|---|---|
| | 6-30-24 | 6,816,485.06 |
| | 10-10-24 | 6,693,161.23 |
| | 12-31-24 | 10,876,374.17 |
| | 4- 6-25 | 10,327,305.29 |
| | 6-30-25 | 10,833,900.94 |
| | 9-28-25 | 10,014,284.31 |
| | 12-31-25 | 10,891,523.81 |
| | 4-12-26 | 10,962,329.02 |
| | 6-30-26 | 10,683,926.48 |
| | 12-31-26 | 10,406,186.27 |
| 495 | 4-23-27 | 10,546,974.09 |
| | 6-30-27 | 9,297,565.80 |
| | 10-10-27 | 9,453,931.98 |
| | 12-31-27 | 10,267,068.42 |
| | 2-28-28 | 9,983,004.84 |
| | 6-30-28 | 10,162,557.57 |
| | 10- 3-28 | 9,118,601.78 |
| | 12-31-28 | 9,968,532.10 |
| | 3-27-29 | 9,701,171.33 |
| | 6-29-29 | 8,063,700.09 |
| | 10- 4-29 | 7,006,104.65 |
| | 12-31-29 | 8,674,374.87 |
| | 3-27-30 | 8,082,425.19 |
| | 6-30-30 | 9,858,542.45 |
| | 9-24-30 | 6,742,053.95 |
| | 12-31-30 | 6,737,057.74 |
| | 3-25-31 | 6,148,634.87 |
| | 6-30-31 | 5,853,730.74 |
| | 9-29-31 | 4,891,033.39 |
| | 12-31-31 | 4,190,195.85 |
| | 6-30-32 | 3,370,201.25 |
| | 9-30-32 | 3,474,448.25 |
| | 12-31-32 | 3,921,134.24 |

496 The Witness:

This column of deposits reflects the time we would survive certain depressions and then come back up. When we organized the new bank, in the time of the moratorium, March, 1933, publicity was given to the or-

ganization, it was advertised quite freely in the papers. We published notice in the daily papers of Wichita Falls, that the old bank was going into liquidation, also notices of the organization of the new bank. It was talked on the streets of Wichita Falls with reference to the liquidation of the old bank and organization of the new bank.

George Peckham died, I believe it was November 7, 1929, and at that time the Marlborough Addition appeared to be a good business investment. Before George Peckham's death, we had expended large sums of money toward developing the Marlborough Addition, improvements such as paving, sewer, water, lights and public utilities.

Upon the death of Mr. Peckham, I discussed with Mr. Scannell and found out that the Wichita Royalty Company was claiming to own all of Mr. Peckham's interests in the Marlborough Addition. At that time he gave me that information, I thought the Marlborough Addition was a substantial investment.

The call of December 31, 1929, shows our bank deposits to be $8,674,374.87; the next call, March 27, 1930, $8,082,000.00; the next call, June 30, 1930, $9,858,000.00; in other words, the amount deposited during that time had begun to climb up to another peak, and
497 then began to drop from that date on.

As to the loans I made to George Peckham, of Wichita Royalty Company, January, 1926 and March 1, 1926, one for $15,000.00 and one for $25,000.00, I will say that my relationship with George Peckham was such that it did not lead me to believe that I ought to investigate what he was going to do with the money, because he had always made an accounting for his obligations to the City National Bank.

Prior to 1927, I was what was known as the active vice-president of the bank, and had been for three or four years prior. Since I have been connected with the bank, I have never had anything to do with checking over the transfer of deposits from one account to

another. During these times we had from six to twelve tellers in the bank. We had one hundred and ten employees at the peak. We had as many as twenty or fifteen or ten, as business changed. Always at least ten men back there until recent years, and we have gone along with less. Up until the organization of the new bank, we have had approximately fifteen bookkeepers and tellers, as well as other stenographers who worked in the bank. I never had any occasion at any time to check over the depositors in that bank, transferring from one fund to another. During that time we had approximately five to seven thousand depositors and customers of the bank. I did not look over or check into the respective depositors. People like George Peckham, I did not take occasion to examine his account and examine the respective withdrawals and de-
498 posits therein, nor did I do so with the Wichita Royalty Company. It is the practice of the bank to send monthly statements at the close of each month. The work is done by the bookkeepers, and other employees lower than officers. That system was followed with George Peckham and the Wichita Royalty Company, and they received their canceled checks each month.

Mr. Boone:

The defendants offer in evidence the $15,000.00 and $25,000.00 deposit slips.

499 (Instruments marked "Defendant's Exhibit 9" and "Defendant's Exhibit 10" and reading as follows:)

DEFENDANT'S EXHIBIT 9

City National Bank

Deposited by
Wichita Royalty Co.

Wichita Falls, Texas 3-10-1936

Checks as follows:

Note .....$25,000.00

Original 49 Total $

DEFENDANT'S EXHIBIT 10

City National Bank

Deposited by
Wichita Royalty Co.

Wichita Falls, Texas 1-18-1936

500 Checks as follows:

Note 15,000.00

Wh (19)

Original 32 Total $

The Witness:

These are the two deposits, the proceeds of those loans, each of those went to the credit of the Wichita Royalty Company.

Re-Cross Examination.

By Mr. Rogers:

I know these statements were mailed, because it was the common practice. We think they received them, because some of them are in the files of the Wichita Royalty Company.

We had quite a few executives of the bank in 1925-26, authorized to loan money, I would say half a dozen. Generally each of these executives had certain customers who would come to them, whenever they wanted to borrow any money, and those executives would undertake to keep up with the credit rating of that individual. I keep up with the credit rating of a man from the manner in which he takes care of his obligations, the activities he has, and the transactions he carries on. I do not remember any of the assets Mr. Peckham had at the time he made this original loan. As a banking official I knew in a general way what his properties consisted
501 of. I might say, that the loans of $15,000.00 or $25,000.00, were always gone into by consultation with other officials of the bank, not necessarily what the proceeds of the loan were going to be used for,

we consulted about whether or not the note was collectable, from his past record. The purpose for which the proceeds are to be used does not bear upon the value of the note. It would not be necessary to know whether he is going to make a good or bad investment. Generally speaking, I would say that it is not necessary to inquire into what the money is going to be used for. I am sure I went into consultation with somebody about whether or not I should loan this $25,000.00 and this $15,000.00 in 1926, in all probability I consulted with the members of the discount committee. There was always a method of consultation on loans of any kind or size. I don't know when we begun to keep the minutes of the discount committee.

The banks were closed in March by presidential proclamation, and by acts of Congress, banks were permitted to open only by permission and with the approval of the banking department at Washington. All the banks opened on the same day, some of them under government supervision, and they all opened on that same day. There might have been a few exceptions, where a bank was under a conservator. There might have been some delay in opening a bank, making further investigation of the situation, but generally speaking, all banks that were chartered were granted permission to open of their own accord, on the same day. The three banks of Wichita Falls opened on the same day, they opened at nine o'clock in the morning.

502

I have before me the discount committee minute book, the date is January 2, 1926, this is the beginning of the year. I might answer another question you asked me, about the indorsement of George W. Peckham, the minutes reflect the indorsement of George W. Peckham for the $25,000.00, but does not reflect his indorsement for the $15,000.00, it might have been there and not reflected.

I do not know that Mr. Kemp deeded all of his assets to a trustee for the benefit of his creditors. He did not

make a deed to Mr. Kell, he might have with reference to certain items. I can show you a financial statement of Mr. Kemp, where he reflected a $5,000,000.00 net worth without any liability. I landed in Wichita Falls on November 11, 1919, to consider this proposition. When I came here the great excitement was about the KAMA field. Mr. Kemp organized a trust estate at that time for the benefit of his children.

Re-Direct Examination.

By Mr. Boone:

I have the records which reflect that during 1926 there was what was known as a discount committee, which passed upon loans above $15,000.00, and below. The discount committee minutes, January 20, 1926,
503 show present at the discount committee P. P. Langford, J. T. Harrell, W. L. Robertson, C. E. Basham, Oral Jones, and A. H. Britain. P. P. Langford was president of the bank, I was vice-president, W. L. Robertson second vice-president, C. E. Basham the next vice-president, Mr. Jones vice-president and cashier, and A. H. Britain was an outside director. The records indicate that the first loan to the Wichita Royalty Company of $15,000.00, due ninety days, was passed upon by that committee. The minutes are signed officially by P. P. Langford, President, and Oral Jones, Secretary. The statement there opposite the fifteen thousand dollars, would indicate eight percent interest was charged.

The minutes, of March 23, 1926, show present, P. P. Langford, President, J. T. Harrell, Vice-President, W. L. Robertson, Vice-President, Oral Jones, Vice-President and Cashier. At that time the loan to Wichita Royalty Company was passed upon by the discount committee, $25,000.00 for ninety days, indorsed by G. W. Peckham. The interest rate is eight percent. The note drew interest from date, the note was for $25,500.00, and we had a method of interest from date, writing up the amount

of interest, and adding it to it. The record is certified to. This record contains the following, "All loans made and reviewed Monday and those paid, as well as partially so, and those maturing and not having attention, those maturing ten days hence were all carefully gone over." This was approved by the discount committee on March 3, 1926. That same recitation ap-
504 pears on the report of the discount committee on January 20. There is also this notation, January 18, "The following approved loans were made January 18, 1926." The credit went up as of January 19, the date of the approval of this loan.

Re-Cross Examination.

By Mr. Rogers:

The deposit slip of $25,000.00, exhibit 9, of the Defendant, shows a credit for the item March 1, 1926, it was made on the record on that date; they had passed upon the application as it came it, but it was during business hours, and it was the next day, as far as writing it up was concerned. I did take it up with the committee before the loan was made. This is the result of that transaction. This is the records of loans they approved, and the only record, that is the way it is done today.

Re-Direct Examination.

By Mr. Boone:

When a man came in and made an application I took it up with these respective officers as to whether they were to approve the loan, and they consented to it, and they ratified their consent by these meetings, as indicated by the minutes, that is, the next meeting we had.

505 Mr. Humphrey:

I wish to supplement the proof we started yesterday. I want to prove a lease of the royalties in Wheeler and Gray Counties.

H. H. CARSON, recalled, examined in chief by Mr. Humphrey, testified as follows:

I have a tabulation from the books and records of the Wichita Royalty Company as to what royalties they own in Wheeler, Gray, Archer and Young Counties. The deed of trust that has been offered in evidence does not recite specifically the royalties owned, but says all of the royalties owned by the Wichita Royalty Company in those four counties, and I have a detailed list. I got those from the actual conveyances that were made into the Royalty Company, and checked them with the various deeds from which the Royalty Company had received these royalties; from their records in their office.

Wheeler County grantee, Wichita Royalty Company, grantor, G. W. Peckham, dated 12-7-26, 2/256ths undivided mineral interest, recorded in Book 60, page 2, Deed Records of Wheeler County, Texas, conveying the Northeast quarter of section 47, block 24, H&GN Railway Company Survey. The next one, 2/512ths, mineral interest, page 60, Book 2, conveying the west half of the southeast quarter of section 43, block 24, H&GN Railway Company survey. The next one, 2/512ths,
506 mineral interest, recorded in book 60, page 1, and conveys the east half of section 54, block 24, H&GN Railway Company survey. The next instrument conveyed on 12-6-26, 2/256ths interest, recorded in book 6, page 3, and conveying the north half of section 45, block 24, H&GN Railway Company survey. The next instrument, 12-7-26, conveys 2/256ths mineral interest, recorded in book 60, page 2, east one-half of section 57, block 24 H&GN Railway Company survey.

Gray County, Grantee, Wichita Royalty Company, grantor, G. W. Peckham, dated 12-6-26, 1/32 mineral interest, recorded in Book 32, page 300, and conveying 120 acres out of Section 59, block 25, H&GN Railway Company survey. It is one-fourth of the oil and gas and minerals instead of 1/32 interest.

Mr. Humphrey:
We offer the deed in evidence.

(Marked "PLAINTIFF'S EXHIBIT 31," as follows:)

Grantor, G. W. Peckham; Grantee, Wichita Royalty Company; consideration $10.00 cash in hand paid by Wichita Royalty Company conveying one-fourth interest in and to all of the oil and gas and other minerals in and under, and that may be produced from the following described land in Gray County, Texas, to-wit:

The west half of the southeast quarter, and the northeast quarter of the Southeast quarter, of Section number fifty-nine (59) in block number twenty-five (25) H&GN Ry. Co. surveys, containing 120 acres of land, more or less.

Together with the right of ingress and egress
507 at all times for the purpose of mining, drilling and exploring said land for oil, gas and other minerals, and removing the same therefrom.

Dated December 6, 1926.

Duly acknowledged by George W. Peckham, before Lillian Ward, Notary Public in and for Wichita County, Texas, December 6, 1926.

Filed for record December 13, 1926 at 10-12 o'clock and recorded December 16, 1926, 1-10 o'clock A. M. in the Deed Records of said county, in volume 32, page 300.

The Witness:
On the same date, recorded in book 32, page 300, and conveying 320 acres out of section 61, block 25 H&GN Ry. Co. survey.

Mr. Humphrey:
We offer the deed in evidence.

(Said instrument marked "Plaintiff's Exhibit No. 32" as follows:)

PLAINTIFF'S EXHIBIT 32

Mineral deed.

Granter, George Peckham; Grantee, Wichita Royalty Company. Consideration, $10.00 cash in hand paid by Wichita Royalty Company. Conveying 1/8 interest in and to all of the oil, gas and other minerals in and under, or that may be produced from the following described land situated in Gray County, Texas, to-wit:

The south half of section number sixty-one (61) in block number twenty-five (25) H & G N Ry.
508 Co. surveys, containing 320 acres of land, more or less. Together with the right of ingress and egress at all times for the purpose of mining, drilling and exploring said land for oil, gas and other minerals, and removing the same therefrom.

Duly acknowledged by George W. Peckham, before Lillian A. Ward, Notary Public in and for Wichita County, Texas, on December 6, 1926.

Filed for record December 13, 1926, at 10-11 o'clock A. M. and duly recorded December 16, 1926, at 9-55 o'clock A. M. in the Deed records of said county, in volume 32, on page 300.

Mr. Rogers:

Wichita Royalty Company objects to the foregoing deeds, and to any other deeds that might later be offered in evidence, from G. W. Peckham as an individual, to his trust, for the reason that there was a fiduciary relationship between Peckham and his trust, and he was incapacitated and without authority to deal in a dual capacity between himself as an individual and himself as trustee, fixing the price at the time of the conveyances, profiting personally in the transactions, conveying to the trust selected items of his own, of doubtful value; and the transactions themselves not being binding upon the trust, there being no showing of ratification or other

facts that would make the transactions binding upon the trust. This objection being made particularly with respect to all of the properties concerning which
509 the witness has testified, and may hereafter testify, without giving the names of the grantor, or without otherwise identifying the transaction in all of its details, and reserving the right later to inquire into and to disclose the real facts with respect to all of the transactions between G. W. Peckham as an individual and himself as trustee.

The Court:

You are raising the same fundamental questions of law that the Court is bound to agree with you on, but I have always conceived that it was the law that if a trustee acted as a good faith innocent—conduit, I believe I will use that word—for something in the trust for the benefit of the trust, with which, of course, the Court will be tremendously concerned and critical and scrutinize, I say that I conceive that to be the law, and if it is the law, then this objection might, with propriety, be overruled. I believe that is correct. The objections will be overruled, and the exceptions noted for the Wichita Royalty Company.

Mr. Rogers:

We desire an exception.

The Witness:

The next one was on 2-6, the grantor G. W. Peckham, recorded in book 32, page 299, and conveying one hundred and sixty-eight acres out of section 60, block 25, H&GN Ry. Co. survey. This is the deed.

Mr. Humphrey:

We offer the deed in evidence.

(Marked "Plaintiff's Exhibit 33" as follows:)

PLAINTIFF'S EXHIBIT 33

510 Grantor, G. W. Peckham. Grantee, Wichita Royalty Company, consideration $10.00 and other valuable considerations, cash in hand paid by Wichita Royalty Company. Conveying 1/64th interest in and to all of the gas and oil and other minerals in and under, and that may be produced from the following described land situated in Gray County, Texas, to-wit:

The northwest quarter of Section 60, in block 25, H & G N Ry. Co. surveys, containing 160 acres more or less.

Together with the right of ingress and egress at all times for the purpose of mining, drilling and exploring said land for oil, gas and other minerals, and removing the same therefrom.

Dated December 6, 1926.

Duly acknowledged by George W. Peckham, before Lilyan A. Ward, Notary Public in and for Wichita County, Texas, on December 6, 1926.

Filed for record, by the County Clerk of Gray County, December 13, 1926, at 10-18 o'clock A. M. and recorded December 16, 1926, at 9:45 o'clock A. M. in the deed records of Gray County, in Volume 32, page 299.

The Witness:

I also have here the deed to the Wheeler County property, that I have testified about.

Mr. Humphrey:

We offer those deeds in evidence.

(Marked "Plaintiff's Exhibits 34, 35, 36, 37 and 38, as follows:)

511 PLAINTIFF'S EXHIBIT 34.

Grantor, G. W. Peckham. Grantee, Wichita Royalty Company. Consideration, $10.00 cash in hand paid by Wichita Royalty Company, and other valuable considerations.

Conveying an undivided 1/128th interest in and to all of the gas, oil and other minerals in and under and that may be produced from the following described land situated in Wheeler County, Texas, to-wit:

Being all of the North-east one-fourth (1/4) of Section number 47, in block No. 24, H & G N Ry. Company survey, in Wheeler County, Texas.

Together with the right of ingress and egress at all times for the purpose of mining, drilling and exploring said land for oil, gas and other minerals and removing the same therefrom.

Dated December 7, 1926.

Duly acknowledged by G. W. Peckham, before Lilyan A. Ward, Notary Public in and for Wichita County, Texas, on December 7, 1926.

Filed for record December 13, 1926 at 11:00 A. M. and recorded in book 60, page 2, of the records of Wheeler County, Texas.

PLAINTIFF'S EXHIBIT 35.

Grantor, G. W. Peckham. Grantee, Wichita Royalty Company. Consideration $10.00 cash in hand paid by Wichita Royalty Company and other valuable considerations.

Conveying 1/256th interest in and to all of the oil and gas and other minerals in and under it, and
512 that may be produced from the following described land situated in Wheeler County, Texas, to-wit:

All of the west one-half of the southeast one fourth (Se 1/4) of section 43 in block 24, H & GN Ry. Co. Survey in said county, containing 80 acres of land, more or less.

Together with the right of ingress and egress at all times for the purpose of mining, drilling and exploring said land for oil, gas and other minerals, and removing the same therefrom.

Dated December 7, 1926.

Duly acknowledged by G. W. Peckham before Lilyan A. Ward, Notary Public in and for Wichita County, Texas, on December 7, 1926.

Filed for record December 13, 1926, at 11:00 A. M. and recorded in book 60, page 2 of the record of Wheeler County.

PLAINTIFF'S EXHIBIT 36.

Grantor, G. W. Peckham. Grantee, Wichita Royalty Company. Consideration, $10.00, cash in hand paid and other valuable consideration.

Conveying an undivided 1/256 interest in and to all of the gas, oil and other minerals, in and under, and that may be produced from the following described land situated in Wheeler County, Texas, to-wit:

All of the east one-half of Section 54, in block 24, H & G N Ry. Co. Survey, containing 320 acres of land more or less, together with the right of ingress
513 and egress at all times for the purpose of mining, drilling and exploring said land for oil,

gas and other minerals, and removing the same therefrom.

Dated December 7, 1926.

Duly acknowledged by G. W. Peckham before Lilyan A. Ward, Notary Public in and for Wichita County, Texas, on the 7th day of December, A. D. 1926.

Filed for record on December 13, 1926, at 11:00 o'clock A. M. and recorded in book 60, page 1, of the deed records of Wheeler County, Texas.

PLAINTIFF'S EXHIBIT 37.

Mineral Deed.

G. W. Peckham, Grantor. Wichita Royalty Company, Grantee. Consideration $10.00 cash in hand paid by Wichita Royalty Company. Conveying an undivided one-sixteenth interest to all of the oil and gas and other minerals in and under and that may be produced from the following described tract of land situated in Wheeler County, Texas, to-wit:

Being all of the North one-half of section number forty five in block 24, H & G N Ry. Co. Surveys, in Wheeler County, Texas.

Together with the right of ingress and egress at all times for the purpose of mining, drilling and exploring said land for oil, gas and other minerals, and removing the same therefrom.

514 Dated December 6, 1926.

Duly acknowledged by G. W. Peckham, before Lilyan A. Ward, Notary Public in and for Wichita County Texas, December 6, 1926.

Filed for record December 13, 1926, at 11 A. M. and duly recorded in book 60, page 3, of the deed records of Wheeler County, Texas.

PLAINTIFF'S EXHIBIT 38.

Mineral Deed.

Grantor, G. W. Peckham. Grantee, Wichita Royalty Company.

Consideration $10.00 cash in hand paid by Wichita Realty Company and other valuable consideration.

Conveying an undivided 1/16 interest in and to all of the oil and gas and other minerals in and under and that may be produced from the following described land situated in Wheeler County, Texas, to-wit:

All of the east half of section 57, in block 24, H & G N Ry. Co. Survey in Wheeler County, Texas, containing 320 acres of land more or less, together with the right of ingress and egress at all times for the purpose of mining, drilling and exploring said land for oil, gas and other minerals and removing the same therefrom.

Dated December 7, 1926.

Duly acknowledged by G. W. Peckham, before Lilyan A. Ward, Notary Public in and for Wichita County, Texas, December 7, 1926.

Filed for record December 13, 1926, at 11:00 A. M. and duly recorded in book 60, page 2 of the deed
515 records of Wheeler County, Texas.

The Witness:

The next properties are located in Archer County Texas.

I will state that these deeds that have been offered in evidence were found in the files of the Wichita Royalty Company, they were all executed and recorded in 1926.

The next property is in Archer County, Texas. Grantee, Wichita Realty Company, Grantor, G. W. Peckham, dated 7-20-25, interest conveyed, undivided 1/16 recorded in Book 105, page 495, conveying the north forty acres, block 21, Anderson Subdivision of South pasture.

Mr. Rogers:
At this time we wish our same objection as heretofore made with reference to these deeds.

The Court:
Same ruling.

The Witness:
The next item, 7-1-25, undivided 1/16 recorded in book 106, page 499, conveying the south thirty-two acres, block 21, south Anderson Ranch Land, and south sixty acres of west eighty acres, block 22, Anderson South Pasture subdivision, and north forty-five acres of east fifty acres of west one hundred acres, block 19, Anderson south pasture; and east sixty acres of west one-hundred and sixty acres, block 19, Anderson south pasture.

Mr. Rogers:
We wish our same objection.

The Court:
Same ruling.

The Witness:
The next property, grantee Wichita Royalty Company, grantor, B. L. Fain, dated February 20, 1925, undivided 1/64th interest recorded in book 99, page 47, and conveying one hundred acres out of block 1598, T&L Survey, Abstract 493.

516

Mr. Rogers:
Same objection.

The Court:
Same ruling.

The Witness:
The next one, Grantee Wichita Royalty Company, grantor B. L. Fain, dated 12-15-24, interest undivided 1/64th. Those undivided 1/64ths, that would be 1/8th of the 1/8th royalty. It is not 1/64th royalty interest conveyed, it is 1/8th of 1/8th royalty.

That is recorded in book 99, page 46, and conveying thirty acres out of block 1598, TP&L Co. survey, Abstract No. 493.

The next, Grantee, Wichita Royalty Company, Grantor F. O. Harrell, dated 12-16-24, conveying 1/128th, recorded in book 93, page 556, and conveying one hundred and twenty-five acres, block No. 46, Mead pasture subdivision of Thomas Survey, Abstract No. 458.

The next one is grantee Wichita Royalty Company, grantor Massie and Ray, dated 6-30-25, interest 1/16th mineral interest, or one-half of the royalty, which is 1/16th. Recorded in Book 108, page 173, and conveying one hundred and seventeen acres out of Isaac Holman League and Labor of land. All of this is in Archer County.

The next one, Grantee Wichita Royalty Company, Grantor G. W. Peckham, dated 4-22-24, conveying 1/64th royalty interest, which is 1/8th of 1/8. That
517 is an undivided 1/64th. Recorded in book 88, page 68, conveying lots 13 and 14, block 27, A. T. & N. C. lands.

Mr. Rogers:
Same objection.

The Court:
Same ruling.

The Witness:
The next one, grantee Wichita Royalty Company, grantor, B. L. Fain, dated October 9, 1925, conveying

1/64th interest in all of oil and gas and other minerals under said land, recorded in book 116, page 130, conveying the east half of section 4, BBB&C RR Survey, Certificate No. 692. That completes the list of the property in Archer County, Texas.

The property in Young county. Grantee Wichita Royalty Company, grantor G. F. Brown, dated 5-6-21, interest 3/64ths, recorded in book 90, page 613, and conveying forty acres out of block 4, Sarah Tankersley Survey.

The next property, Grantee Wichita Royalty Company, Grantor, W. A. Morris, dated 12-6-21, interest 1/16th of 1/8th, recorded in book 93, page 397, conveying eighty acres out of J. A. Harkness survey, abstract No. 1442.

The next property, Grantee Wichita Royalty Company, Grantor T. E. Matthews, dated 4-1-22, interest conveyed 1/8th of 1/8th, book 94, page 112, and conveying the south half of J. A. Harkness survey, abstract 1442.

The next property, Grantee Wichita Royalty Company, grantor B. L. Fain, dated June 6, 1922, conveying 1/8th of 1/8th, book 97, page 432, conveying eighty acres, B. L. Aynesworth Survey, B. R. I. R., 49, Ab-
518 stract 1948.

The next property, Grantee Wichita Royalty Company, Grantor, B. L. Fain, dated 6-20-21, royalty interest 5/8 of 1/8, book 93, page 268, forty acres out of block 4 of Sarah Tankersley Survey.

The next property, Grantee Wichita Royalty Company, by B. L. Fain, dated 3-28-22, 1/16 of 1/8, block 94, page 110, conveying forty acres of C. E. F. Auberg Survey, Abstract No. 1663.

The next one, Grantee Wichita Royalty Company, grantor T. L. Morgan, dated August 12, 1922, conveying 1/16 of 1/8 in book 97, page 97 and conveying forty acres of C. E. F. Auburg survey, 1663.

The next one, Grantee Wichita Royalty Company, Grantor J. M. Perkins, dated March 3, 1922, conveying 1/4 of 1/8, book 94, page 264, all of R. D. Owens survey, abstract No. 2245.

The next one, Grantee Wichita Royalty Company, Grantor T. E. Matthews, dated March 3, 1922, undivided 1/16 interest, book 94, page 265, south half of J. A. Harkness Survey, Abstract 1442.

The next one, Grantee Wichita Royalty Company, Grantor B. L. Fain, dated March 11, 1924, interest 1/4 of 1/8, book 102, page 162, one hundred and sixty acres out of R. D. Owens Survey, Abstract No. 2245.

The next one, Grantee Wichita Royalty Company, Grantor, A. W. Phillips, dated March 29, 1922, conveying 1/24 of 1/8 interest, book 94, page 113, north one hundred acres, T. J. Humphrey survey, Abstract No. 153.

The next one, Grantee Wichita Royalty Company, Grantor G. W. Peckham, dated March 12, 1923, undivided 3/16 interest in book 99, page 555, all
519 of B. R. I. R. No. 39, J. E. Dowdl Survey, Abstract No. 2215.

I have described some twenty five or thirty royalty interests in those four counties, conveying the mineral and royalty interest in several thousand acres of land, I found most of those records and instruments in the Wichita Royalty Company's books when I made my investigation. They had owned those properties since the time of this inquiry. Many of those properties are located in oil producing territories.

Here is a deed from the trustee, dated the 9th day of August, 1934, wherein Ray Bland, as trustee, for a consideration of $250.00, paid by Guy Rogers, as trustee under the will of L. B. Rogers, grants, sells and conveys unto Guy Rogers, by Guy Rogers, trustee under the will of L. B. Rogers, deceased, all and singularly the properties of the Wichita Royalty Company situated in the counties of Archer, Young, Gray and Wheeler, Texas. That is the property I have just described. I know enough about the royalties that I have just described, twenty-five or thirty, covering several thousand acres of land, to say whether or not the value of those properties was in excess of $250.00 on the 9th day of August, 1934, they were much in excess of that.

Cross Examination.

By Mr. Rogers:

I am the same Mr. Carson whom Mr. Harrell testified had been designated by the parties to this suit, Mr. Harrell, the bank and bank directors, and others,
520 to investigate, check, and analyze the books and records of the bank and of the individuals as to the facts involved in this controversy. I have spent many months doing that. I have thus become generally familiar with the books and records of the two banks and of Mr. Harrell. I have many of those original records available at this time, and such as I do not have are accessible to me. I have the pleadings filed by the Wichita Royalty Company, before me.

On January 1, 1926, Mr. Harrell owed the old bank $7,500.00; the indebtedness was increased on January 11, to $10,560.00, and again increased on January 19, to $15,574.44. On that date, G. W. Peckham owed the bank $28,050.00, and I cannot tell from these records whether they paid the discount or whether it was added to it, the liability ledger showed he owed at that time $28,050.00. On November 3, 1925, G. W. Peckham had executed a series of notes payable to J. T. Harrell and C. E. Basham for the unpaid purchase price, for the purchase of an interest in the Stephens Royalty. There was one of those notes remaining unpaid on January 1, 1926, in the principal sum of $5,000.00, on which interest since November 3, 1925 had accrued. The records indicate that at that time Mr. Harrell and Mr. Peckham were jointly liable, with others, to the Highland Irrigation Company, upon $51,885.00 worth of vendor lien notes, executed by them and others in their original purchase of the Marlborough Addition; that is, J. A. Kemp, G. W. Peckham, W. H. Peckham and J. T. Harrell, were the four who signed the vendor
521 lien notes.

I have the original deposit slips whereby the first payment on the sale by Mr. Harrell and Mr.

Basham, to Wichita Royalty Company, of an interest in the Stephens Royalty, were given to them by the bank. This one which I now hand you is the first deposit slip, that is, to Mr. Harrell. Here is the one to Mr. Basham.

When Mr. Harrell and Mr. Basham, in November, sold to G. W. Peckham an interest in the Stephens Royalty, the first payment by Peckham was made to them on November 12, 1925, the total amount of the payment was $15,000.00, one-half of it was deposited to Mr. Harrell's account and one-half to Mr. Basham's account. The deposit slip shows a notation, "undivided 1/64th interest in the south forty acres of Stephens Royalty sold to G. W. Peckham, effective 7:00 o'clock November 3, 1925. Cash paid $7,500.00." That is reading from Mr. Harrell's deposit slip. The balance of the notation reads, "G. W. Peckham's note for balance, $7,500.00 due in thirty, sixty and ninety days, eight percent interest, 11-3-25." The memo, "Notes for $5,000.00 each due thirty, sixty and ninety days payable to J. T. H. and C. E. B. held by C. E. B." "Delivered to C. E. B." means C. E. Basham. I have the deposit slips thereafter showing the payment by G. W. Peckham to these gentlemen of the unpaid purchase price of the first purchase, Stephens Royalty.

The next payment was on November 24, 1925, deposited to J. T. Harrell, $2,511.50, $11.50 was the interest
522 on his part of the $5,000.00 note. On the same day there was the same amount deposited to the account of C. E. Basham. The next payment to J. T. Harrell, November 27, 1925, for $2,513.00, the $13.00 being interest as deposit slip to C. E. Basham, for the same amount, on the same date. The next deposit was on February 2, 1926, to J. T. Harrell for $2,550.00, the $50.00 representing interest and on the same date there was a deposit for the same amount to C. E. Basham.

On the second sale to the Wichita Royalty Company, by Messrs. Harrell and Basham, the payments made as shown by the deposit slips to the sellers, were, on January 15, 1926, there was a deposit to Mr. Harrell for $1,100.60, and on the same day there was a deposit for

the same amount to C. E. Basham. On January 25, 1926, deposit to Mr. Harrell for $5,014.00, $14.00 representing interest. On the same date a deposit for the same amount to C. E. Basham. On March 6, 1926, deposit for $2,530.00 to Mr. Harrell. On the same date, a deposit to Mr. Basham, for the same amount. $30.00 represents interest. On March 31, 1926, there was a deposit to Mr. Harrell for $2.543.50, the $43.50 representing interest. On the same day a deposit of the same amount to Mr. Basham. I believe all of those deposit slips were made out in the handwriting of Mr. Harrell. The first one was handled by Mr. Basham, on the $7,500.00. Mr. Harrell handled all but the first. Those items were made by checks drawn by G. W. Peckham upon his personal deposit account with the
523 City National Bank.

I have access to and in my possession the deposit slips, canceled checks and return statements of accounts, which belong to G. W. Peckham, with the bank, that is, I have a part of them, we have a part of the statements here, and some of the checks are missing out of these statements. I have investigated and tried to find them, and have been unable to locate them, they were loaned to us by the administrator of the estate. In the place of each lost and canceled check, when I first inspected them, appeared a little notation describing briefly the items that were not in the statement. I don't know by whom those slips were made. I think during this time Mr. Peckham kept a bank account with the Security National Bank, I have a statement or two from that bank. We have three of the Security National Bank statements available, with the canceled checks behind them. Here is one with two slips, but I have one, and the other I do not have. This one shows it was handled in the former trial. This was in June, 1925, and I have a statement for March 1926, and one for April 1926 and that is the only three I have, and I tried to find some more and could not locate them.

Mr. Rogers:
We offer them in evidence.

(Marked "DEFENDANT'S EXHIBITS 11, 12 & 13" as follows:)

In lieu of copying the exhibits. Exhibit 11 purports to be the individual ledger statement of G. W. Peckham, with the Security National Bank of Wichita Falls, showing a balance on June 30, 1925 of $12.67. De-
524 posit on March 9, 1926, of $6,000.00, making a net balance of $6,012.67. A deposit on March 22, 1926, of $2,285.00, making a net balance of $8,397.67. Check on March 24, 1926 of $190.00, reducing the balance to $8,107.67. Accompanying the statement is a canceled check drawn by G. W. Peckham in favor of the Security National Bank dated March 24, 1926, for $190.00.

Exhibit 12, as follows:

Exhibit 12 is the individual ledger account of G. W. Peckham with the Security National Bank showing on April 5, 1926, an old balance of $8,107.67. Shows no deposits. Shows the following checks to have been drawn, April 16, 1926, $7,500.00; April 28, 1926, $79.50; May 8, 1926, $400.00; May 10, 1926, $6.80. Accompanying the same are four checks for $400.00, payable to cash. $79.30 payable to E. Scannell. $6.80 payable to E. E. Scannell, marked "My part taxes, 1925, Lot 16, block 44A." There is also found what purports to be a copy of a check for $7,500.00 payable to the Marlborough Addition.

Exhibit 13: Individual ledger sheet account of G. W. Peckham with the Security National Bank, starting with a balance of December 31, 1924, $6.42. The following deposits, June 8, 1925, $10,000.00; June 25, 1925, $9,-

500.00, showing the following checks or charges against it. June 11, 1925 $10,000.00; June 26, 1925, $9,493.75. Leaving a net balance of $12.67. Accompanying that is found only one original check, namely the one for $9,-
493.75, payable to Merchison and Fain Oil Con-
525 pany, as noted on it, 1/16th royalty, three hundred and seventeen acres, in block 1921 and 1922, South Anderson Ranch. Also sheet of paper which purports to be a copy of a check for $10,000.00 shown to be drawn in favor of the First National Bank of Tulsa.

The Witness:

Aside from those exhibits I do not have and have not seen any bank statements or what purports to be a bank statement or a copy of a bank statement of G. W. Peckham with the Security National Bank in Wichita Falls, Texas, or any checks drawn on that bank, or what purported to be a copy of any such checks.

At the beginning of business January 4, 1926, G. W. Peckham's personal account with the plaintiff bank was $838.70. The records indicate that on January 4, 1926, G. W. Peckham's account was credited with $5,000.00. There also shows on the Wichita Royalty Company account the same date there was charged a check of $5,000.00. That is check No. 452, of Wichita Royalty Company, signed by E. E. Scannell, indorsed G. W. Peckham. This check was paid on the 4th, against the account of Wichita Royalty Company, there was a $5,-000.00 charge, the one $5,000.00 check on that date. The deposit slip to G. W. Peckham's account only lists a $5,000.00 check, it does not say who it is on. From my examination and investigations of the books of the bank, and Wichita Royalty Company, the check No. 452, on the Wichita Royalty Company is the item charged against the royalty company's account and credited to the account of G. W. Peckham.

526 On January 5, 1926, G. W. Peckham paid from his personal deposit account in our bank, $812.00 to the Highlands Irrigation Company. The notation

on this check indicates that that was the purchase of some lots, 11, 12, 13 and 14 in block 44A; payable to Highland Irrigation Company, dated January 4, 1925, signed G. W. Peckham, and indorsed "pay to J. A. Kemp, Highland Irrigation Company, by C. M. Crowell" with J. A. Kemp's indorsement on it. The records indicate that on January 11, G. W. Peckham had a credit on his account of $5,000.00 and there was a charge, a check charged against the account of Wichita Royalty Company for $5,000.00 on the same date.

Check No. 458 for $5,000.00, perforated Paid January 11, 1926, payable to the company's order, that check was signed by E. E. Scannell, payable to the City National Bank and G. W. Peckham received a deposit for $5,000.00 on the same date. I think that money went to the credit of G. W. Peckham.

I have in my possession the check of G. W. Peckham for $2,567.75 in payment of his part of the purchase of the Curlee land. It is dated January 8, 1926, and charged against his personal account January 11, 1926. On January 16, 1926, the Wichita Royalty Company was charged upon its liability with $15,300.00. On January 18, the Royalty Company account was credited with $15,000.00. I also have a check to J. T. Harrell and C. E. Basham, dated January 15, 1926, for $2,201.32, signed
527 G. W. Peckham, and the notation says, "Vernon Royalty." That is known in the record as the Stephens Royalty. It is indorsed by J. T. Harrell and C. E. Basham. Mr. Peckham's balance on January 11, without including the $5,000.00 deposit was $2,456.00. Add to that all deposits he made thereafter, except the $5,000.00 one, to his payment to Mr. Harrell and Mr. Basham, and charging against that sum all checks which he drew upon his personal account, other than the ones to Mr. Harrell and Mr. Basham, he would have lacked approximately $1,362.87 having enough money in the bank to pay the Harrell and Basham checks; in other words, in other words, it took approximately that much of the $5,000.00 deposited, crediting

other items as suggested, in order to pay the Harrell and Basham checks. On January 18, the Wichita Royalty Company was credited with $15,000.00 proceeds of the loan; that day the Wichita Royalty Company's deposit account was charged with $15,769.07, and G. W. Peckham's personal account was credited with a like amount. This check No. 461, drawn on and payable to the plaintiff bank for $15,769.07, is the item by reason of which I charged the trust and credited Peckham. It is signed by Mr. Scannell. There was not any other deposit to the personal account of G. W. Peckham after the $15,769.07 deposit on January 18, prior to January 15, 1926, other than the $15,000.00. Then on January 25, without another deposit, as I have said, other than the $15,000.00, Mr. Peckham drew his check for $10,028.00, payable to Mr. Basham and Mr. Harrell. It was charged against his personal account and as heretofore shown
528 by the record, one-half deposited to Mr. Harrell's account and one-half to Mr. Basham's account. On January 23, 1926, before Mr. Harrell deposited his half of that check, his personal balance with the bank was $219.16. He did not make another deposit until he deposited this G. W. Peckham item, except an item of $15.70, and there was some checks on that, which made his balance $181.15. His balance was increased by the deposit of $5,014.00, paid by G. W. Peckham. On the same day Mr. Harrell paid the plaintiff bank $5,006.57, upon his personal liability to the bank. He would have been overdrawn at that time had that check been cleared in payment of his private debt to the bank, but for the payment to him and deposit of the payment by G. W. Peckham on that date, he would have been overdrawn $4,825.51.

I do not have a copy of the deed from Curlee to Peckham and Harrell and from Mr. Peckham to Mr. Harrell. The deed from W. S. Curlee to J. T. Harrell and G. W. Peckham is recorded in volume 243, page 577, Wichita County deed records. This other deed from Peckham to J. T. Harrell and C. E. Basham, recorded in volume 254, page 326, Wichita County Deed Records.

Mr. Rogers:
We offer those two deeds in evidence.

(Marked "Defendant's Exhibits 14 and 15" as follows:)

DEF. EXHIBIT 14.

Grantor, W. S. Curlee. Grantees J. T. Harrell and G. W. Peckham. Consideration, $4,814.00 cash in hand paid, the assumption of one note for $1,000.00
529 due in one year after August 24, 1924; note 2, for $1,000.00 due in two years after August 24, 1925, and Note 3, for $814.00. Said notes described in deed from Joe Kerr filed for record Vol. 250, page 334, Wichita County Deed Records. Grantee to pay all taxes for the year 1926.

Conveying Block 7, of Sales subdivision of the South one-half of northeast one-fourth of the J. A. Scott survey, No. 10, Abstract No. 302, being further described as follows, to-wit:

Dated January 8, 1926.

$5.00 revenue stamps affixed and canceled.

Duly acknowledged by W. S. Curlee, before Clarice Brown, Notary Public in and for Wichita County, Texas, January 8, 1926.

Filed for record January 11, 1926, at 8:00 A. M.

Recorded January 14, 1926, at 3:35 P. M.

530 DEFENDANT'S EXHIBIT 15.

Grantor G. W. Peckham; Grantee J. T. Harrell and C. E. Basham.

Consideration, $10.00 in cash and the assumption of note 1 for $1,000.00 due in one year after August 24, 1925;

Note No. 2, for $1,000.00 due in two years after August 24, 1925, and Note No. 3, for $814.00, said notes describes in deed from Joe Kerr filed for record in volume 250, page 334, Wichita County, Texas, deed records.

Conveying all right, title and interest, in an undivided one-half interest in and to; tract or parcel of land known as block No. 7 of Sayles Subdivision of the south one-half of northeast one-fourth of J. A. Scott Survey, No. 10, Abstract No. 302, being further described as follows:

Beginning at the northeast corner of block No. 8, of the same, being the Northwest corner of this Block No. 7, J. A. Scott survey No. 10; Thence East 1324.3 feet to the Northeast corner of Block No. 7; Thence South 89° 46' West 13333.1 feet to the Southwest corner thereof; Thence North 0° 06' East 1331.2 feet to the place of beginning, and containing 38.14 acres of land more or less, exclusive of a twenty-foot strip reserved for road right of way, together ith all improvements situated thereon. The only interest claimed by the grantor, is an undivided one-half interest.

531 Dated January 23, 1926.

Duly acknowledged by G. W. Peckham, before Ethel Covington, Notary Public in and for Wichita County, Texas, January 23, 1926.

Filed for record January 26, 1926, at 8:00 o'clock A. M.

Recorded January 28, 1926, at 3:23 P. M.

The Witness:

On February 2, 1926, the trust deposit was not charged to G. W. Peckham's personal account and credited with $400.00 in this bank, that is, the Security National Bank; on February 2, his account was credited with $400.00. I have the deposit slip. Though drawn on the Security

National Bank, that check, No. 466, was deposited to Mr. Peckham's personal account in the plaintiff bank. It was drawn payable to G. W. Peckham, indorsed G. W. Peckham and signed by E. E. Scannell, dated January 30. On February 2, G. W. Peckham paid Mr. Harrell and Mr. Basham $5,100.00 out of his personal account, one-half being deposited to Mr. Harrell and one-half to Mr. Basham.

Charging Mr. Peckham's original balance, plus his subsequent deposits, but excluding the $15,000.00 item, charging the sum thus arrived at with all of his checks down to but not including the two from Mr. Harrell and Mr. Peckham, of $5,100.00, he would have been overdrawn but for the $15,000.00. If you wipe off this $15,769.07, he would have been overdrawn about $13,890.00. The payment he made out of that account to Mr. Harrell and Mr. Basham, of $5,100.00, was out of the proceeds of
$15,000.00 deposit, if you charge all checks
532 against his account, other than the funds transferred. This $10,028.00 is also considered in that deal. On February 2, he could have paid that $5,100.00 check and got some more back. There are some checks in there paid that day, just glancing at it, that would have paid the $5,100.00 check. I would say there would have been an overdraft, but for the transfer of those funds upon the clearing of Mr. Harrell's check, that is, if you are going to charge that Stephens Royalty deal against that.

On February 13, 1926, Peckham's personal check of $550.00 was credited on his liability, and charged against his private account. On February 27, 1926, the records indicate that the Wichita Royalty Company account was charged $400.00, and there is a deposit on the same date of $400.00 to G. W. Peckham. The deposit slip shows a check on us for $400.00. The check was dated February 27, and paid on the same day, on the City National Bank, for deposit, and indorsed G. W. Peckham. Those initials on there, JMJ, mean Jack M. Jeffus. That notation on there, "WR" is my notation. In checking it over I came to the conclusion that trust check was the one deposited to

the account of G. W. Peckham. I also have a check dated February 26, 1926, paid February 27, 1926, payable to the order of City National Bank for $21,000.00, signed by G. W. Peckham, and says, "Escrow on Wilbarger Royalty." The proceeds of those funds were credited to O. T. Warlick, receiver, it went into escrow. Here are two cashier's checks, O. T. Warlick, Escrow,
533 . $5,000.00, and O. T. Warlick Receiver, $2,000.00, to be held in escrow No. 2,694. That shows to the credit of O. T. Warlick, receiver, on the back of the check. I think I can get that escrow file. On February 27, Mr. Harrell paid the bank on his indebtedness, out of his private account, $10,000.00. On February 26, he had borrowed $10,000.00 from the City National Bank and on February 27, he paid it back, and at the close of business February 27, he made a deposit, $23,827.96. He deposited $31,850.00 on February 27. I can get those deposit slips. Part of the $30,000.00 was not the proceeds of the $10,000.00 loan.

On March 1, 1926, Mr. Peckham's personal liability to the bank was $28,050.00; his personal balance at the beginning of business that day was $341.90. Mr. Harrell on that day owed the bank $7,060.00. At that time George Peckham and Mr. Harrell were liable upon the Marlborough indebtedness, in the amount of something over $50,000.00, I forget those dates, I don't know whether any of it had been paid or not, but I am sure it was as much as $50,000.00 on the first of March. W. H. Peckham owed the bank on March 1, 1926, $6,120.00, he was also obligated with Mr. Harrell upon the Marlborough Addition. On March 1, the original $25,000.00 loan to the Wichita Royalty Company was concluded, as shown by the minutes of the discount committee. G. W. Peckham's personal balance that morning was $341.90. Mr. Harrell then owed the bank $7,060.00. I have a check dated March 1, 1926, payable to the order of W. H. Peckham, for $11,811.85, signed by G. W. Peckham, the
534 notation, "Marlborough Addition," indorsed by W. H. Peckham, and paid by the City National

Bank March 9. That was George Peckham's purchase of W. H. Peckham's interest in the Marlborough Addition. G. W. Peckham's check to W. H. Peckham for $11,811.85, was more than G. W. Peckham's balance on March 1, which balance was $341.90, G. W. Peckham's check did not clear until March 9, 1926. There was not any deposit to G. W. Peckham's account after his deposit of $17,623.17 until the day W. H. Peckham's $11,000.00 check was cleared. W. H. Peckham's personal balance on March 9, prior to his depositing of that $11,811.85 check, was $518.52. On March 6, 1926, there was a check charged against the account of the Wichita Royalty Company for $17,623.90; George Peckham's account was credited with the same amount on the same day.

This check No. 478, which you now hand me, dated March 6, to the City National Bank, on the City National Bank, signed E. E. Scannell, no indorsement, there was a deposit to G. W. Peckham on that same day of the same amount, but no identification as to where it was or who it came from. The bank is the payee in that check, and I am of the opinion that it was deposited to the credit of George Peckham. There was a check charged against the account of George Peckham for $5,060.00, dated March 6, payable to J. T. Harrell and C. E. Basham, in the amount of $5,060.00, signed G. W. Peckham, and indorsed J. T. Harrell and C. E. Basham; then three days later W. H. Peckham cleared his $11,811.85 check. Before that deposit, W. H. Peckham's balance was
535 $518.52. On that date, W. H. Peckham paid to the bank his entire indebtedness of $6120.00, out of that account. Such payment to the bank, except to the extent of $218.52, was paid wholly out of the funds, the proceeds of the check of G. W. Peckham to W. H. Peckham.

I now have the deposits I was looking for, the aggregate sum is $33,000.00.

This check which you now hand me, dated January 16, 1923, No. 1194, payable to the order of the City National Bank for $1,040.00, signed by the Wichita Royalty Com-

pany, E. E. Scannell, drawn on the Security National Bank, Wichita Falls, Texas, was deposited to the account of George W. Peckham on January 17, 1923. A deposit slip states it is Wichita Royalty Company. Note, $1,000.00, interest $40.00, a total of $1,040.00, handled by cage 17, which is the collection department of the City National Bank. Mr. Deaton wrote the original of this deposit slip. We would not have the note. I do not have any information in respect to the notation only on the deposit slip. I did not handle the item. I did not look at the books and records of the Wichita Royalty Company to ascertain where the Wichita Royalty Company owed any notes. I do not have a photostatic copy or a copy of all of the books and records of the Wichita Royalty Company, some of the books I have not received, some cash books and some journals, the trustee told me they could not be found.

You hand me now check dated February 5, 1923, No. 1,217, payable to the order of G. W. Peckham, signed Wichita Royalty Company by E. E. Scannell trustee, drawn on the Security National Bank, Wichita Falls, Texas, indorsed G. W. Peckham, for $500.00. I have a copy of the deposit slip made on February 5, to George Peckham, G. W. Peckham, total $1,945.36, and in that there is a $500.00 check. I could not identify that to be the one. I am of the opinion that that is the one that was deposited in the plaintiff bank.

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You now hand me check dated March 1, 1923, No. 1,445, payable to the order of G. W. Peckham, for $500.00, signed Wichita Royalty Company by E. E. Scannell for trustee, drawn on the Security National Bank, Wichita Falls, Texas, and indorsed G. W. Peckham. On March 1, there was a deposit to G. W. Peckham for $500.00. The check and the deposit was run through the same cage, but other than that, there is no marks of identification, but I am of the opinion that it is the same item.

You now hand me check dated March 13, 1923, No. 1,262, payable to the order of G. W. Peckham, $52.25, signed Wichita Royalty Company by E. E. Scannell,

trustee, drawn on the City National Bank of Wichita Falls, and indorsed G. W. Peckham. On March 14, there is a deposit of three checks to the account of G. W. Peckham and one of them is for $52.25. I am of the opinion that that is the same check that was deposited to the account.

You hand me a check dated February 21, no year date, No. 1,238, payable to the order of the City National Bank, in the amount of $1,046.66, signed Wichita
537 Royalty Company by E. E. Scannell, for trustee, drawn on the Security National Bank of Wichita Falls, handled by Cage No. 17, on the City National Bank. The deposit slip to G. W. Peckham's account dated March 1, 1923, says Wichita Royalty Company $1,000.00 note, interest $46.66, total $1,046.66.

You hand me now check dated March 31, 1923, No. 1,280, payable to the order of George W. Peckham for $500.00, signed by Wichita Royalty Company, by E. E. Scannell for trustee, and drawn on the City National Bank, Wichita Falls, indorsed G. W. Peckham. On April 2, 1923, I have a deposit totaling $3,026.67. There is no notation on the deposit. There is a check for $500.00. The check and deposit was handled by the same teller, and I am of the opinion that that is the check. Those instruments are dated February and March, 1923.

You now hand me check dated May 1, 1923, No. 1,310, payable to the order of G. W. Peckham, in the amount of $500.00, signed Wichita Royalty Company, by E. E. Scannell, for trustee, drawn on the City National Bank of Wichita Falls, Texas, indorsed G. W. Peckham. On May 8, 1923, I have a deposit totaling $900.00 to G. W. Peckham, $500.00 check on that deposit, and I am of the opinion that this check is the one that was deposited.

I now have check dated April 2, 1923, No. 1,282, payable to the order of the City National Bank for $1,006.67, signed Wichita Royalty Company by E. E. Scannell for trustee, drawn on the City National Bank, no
538 indorsement. On April 2, 1923, I have a deposit slip to the account of G. W. Peckham, totaling

$3,026.07. Three checks, there is one for the amount of this check, and I am of the opinion that this is the check that was deposited.

I next have check No. 1,281, dated April 2, 1923, payable to the order of the City National Bank, $1,520.00, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank. There is a check for the same amount in that same deposit, as I previously told you about. I am of the opinion that that is the check that is listed on that deposit.

Next is trust check No. 1291, dated April 9, 1923, payable to the order of G. W. Peckham, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank, indorsed G. W. Peckham. On April 10, 1923, I have a deposit to the account of G. W. Peckham for the same amount. No marks of identification on it other than the amount. I am of the opinion that that is the check that was deposited.

You next hand me check No. 1322, dated May 8, 1923, payable to the order of George W. Peckham, $400.00, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank, indorsed George W. Peckham. On the same date there is a deposit for $900.00 to G. W. Peckham, $400.00 check listed thereon. There is no other marks, other than the same teller handled both items, and I am of the opinion that that is the check.

You next exhibit to me check dated May 11, 1923, No. 1325, payable to the order of George W. Peck-
539 ham for $2,533.33, signed by Wichita Royalty Company, by E. E. Scannell and drawn on the City National Bank, indorsed George W. Peckham. I have a deposit to George W. Peckham's account, May 11, 1923, for $2,533.33. The check and deposits were handled by the same teller, and I would be of the opinion that is the item.

I next have check No. 34, dated August 1, 1923, payable to G. W. Peckham for $500.00, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank, indorsed G. W. Peckham and paid August 3, 1923.

I have a deposit slip dated August 3, 1923, to G. W. Peckham, totaling $533.34, made up of two items, one of them is a $500.00 check, and this check and deposit was handled by the same teller, and I am of the opinion that it was the same check.

I have here check dated August 14, 1923, No. 46, payable to the order of W. H. Peckham for $9,219.51, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank, Wichita Falls, Texas, indorsed W. H. Peckham, and a second indorsement, G. W. Peckham. I have a deposit slip dated August 14, 1923, totaling $15,933.81, consisting of four checks, and there is a check for the same amount in there. There is no identification mark on it, other than that the teller handling the check and deposits, and I would be of the opinion that that is the check. It was deposited.

The next check is dated August 14, 1923, No. 47, payable to the order of B. L. Fain for $1,460.00,
540 signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank, indorsed by B. L. Fain and G. W. Peckham. There is a check in the same deposit for the same amount on the same date and I would be of the opinion that is the check for the deposit.

This check which you hand me, dated August 14, 1923, No. 48, payable to the order of W. H. Peckham in the amount of $1,033.33, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank, Wichita Falls, Texas, indorsed W. H. Peckham and G. W. Peckham, there is a check of the same amount in the deposit slip on the same date, and I would be of the opinion that that was the check so deposited. The indorsements on the check looked to be in the same handwriting.

The next is a check dated August 14, 1923, No. 49, payable to the order of B. L. Fain for $4,120.97. The check is on the Wichita Royalty Company, by E. E. Scannell, drawn on the City National Bank and indorsed by B. L. Fain and G. W. Peckham. The check listed in the de-

posit slip on the same date for that amount, and I would be of the opinion that it is the same check that was deposited, to G. W. Peckham's account. I do not know whether that is the signature of B. L. Fain or not. The indorsement of B. L. Fain resembles the handwriting of G. W. Peckham on that check, it does not resemble the original signature of B. L. Fain, which I have examined.

The next check is dated August 31, 1923, No. 54, payable to the order of G. W. Peckham for $500.00 on
541 Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank, indorsed G. W. Peckham. Deposited on September 21, 1923, to G. W. Peckham's account, totaling $2,500.00. Two checks listed, one of them for $500.00, it is handled by the same teller, and I would be of the opinion that that is the check that was so deposited.

The next check, dated September 30, 1923, No. 73, payable to the order of G. W. Peckham for $500.00, drawn on the Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank, indorsed G. W. Peckham. On October 16, 1923, G. W. Peckham had a deposit of $503.77. There is a check listed in that deposit of $500.00. No other marks of identification other than the same teller handled both items, and I would be of the opinion that that is the check so deposited.

The next check is dated October 31, 1923, No. 92, payable to the order of G. W. Peckham for $500.00, drawn on the account of Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank, Wichita Falls, Texas, indorsed G. W. Peckham. On November 1, 1923, there was a deposit to the account of G. W. Peckham for $500.00. There is no marks of identification other than the teller handled the items, and I would be of the opinion that that is the check that was deposited to that account.

The next item, check dated November 14, 1923, No. 101, payable to the order of the City National Bank for $2200.00 signed Wichita Royalty Company by,

542 E. E. Scannell, drawn on the City National Bank, and handled by cage No. 18. This is the $2200.00 check, there is another one in there on the same date. I have two checks here, check No. 101, dated November 14, 1923, payable to the City National Bank in the amount of $2200.00, signed by the Wichita Royalty Company, by E. E. Scannell, drawn on the City National Bank. Also a check on the same date, No. 102, payable to the City National Bank for $500.00, drawn on the Security National Bank, Wichita Falls, drawn by the Wichita Royalty Company by E. E. Scannell, and indorsed by the City National Bank, payable to the City National Bank, and the City National Bank cleared it. Handled by cage No. 18, on November 16, 1923, and it was in payment of a cashier's check, No. 82342, payable to the order of G. W. Peckham, in the amount of $2,700.00, indorsed by G. W. Peckham and paid by the City National Bank on 11-16-23, the same date of its issuance. The cashier's check was deposited to George Peckham's account on November 16, 1923, and the deposit, $3,019.48, cashier's check was set out R. C. C. No. 82,342, $2700.00. Referring back to the $21,000.00 escrow item, that was this check dated February 21, 1926, payable to the City National Bank for $21,000.00, signed by G. W. Peckham with the notation, "escrow on the Wilbarger Royalty." Indorsed to O. T. Warlick, Receiver. It was deposited in the City National Bank, February 26, 1926, O. T. Warlick receiver deposit of $25,974.00. This check for $21,000.00 and another item for $5,000.00 and some revenue stamps deducted from that, making a deposit of $25,-
543 974.00—O. T. Warlick receiver. I can get you the record on the $5,000.00 item in just a minute.

The next item, dated December 19, 1933, No. 134, payable to the order of G. W. Peckham, $500.00, Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank, indorsed G. W. Peckham, deposited on December 24, 1923, for $500.00, to the account of G. W. Peckham. No other marks of identification, other than the same teller handled both the check and the deposit,

and I am of the opinion that that is the check so deposited.

The next item, dated January 19, 1924, No. 147, payable to the order of the City National Bank for $500.00, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank and indorsed G. W. Peckham. I have a deposit on January 19, 1924, to the account of G. W. Peckham, no marks of identification on the deposit slip, other than that the teller handled both the check and the deposit, and I am of the opinion that this is the check so deposited.

The next item, check dated January 30, 1924, No. 149, payable to the order of George W. Peckham for $500.00, and Wichita Royalty Company, by E. E. Scannell, drawn on the City National Bank, Wichita Falls, indorsed George W. Peckham. We have a deposit dated January 31, 1924, for $500.00, to G. W. Peckham and no marks of identification, other than the teller handled the check and the deposit, and I am of the opinion that that is the check so deposited.

544 I have a check dated February 2, 1924, No. 154, payable to the order of B. L. Fain for $12,000.00 signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank, Wichita Falls. Indorsed B. L. Fain. I couldn't tell you whether that is Mr. Fain's signature or not. I have a deposit to the account of G. W. Peckham February 2, 1924, for $12,000.00, no marks of identification on it other than the teller's stamp. I do not know the handwriting of the lady secretary of Mr. Peckham at that time. That check was not deposited to B. L. Fain's account. There was a deposit by the same teller that cleared the check to the account of Mr. Peckham on the same day; from the investigation made of the books and records I have examined, it is my opinion that that item was the one deposited to the account of G. W. Peckham, but I could not swear that that was the one.

I can now tell you about the $5,000.00, Mr. Warlick, that is O. T. Warlick Receiver, and G. W. Peckham; this contract is between W. N. George of Tarrant County,

party of the first part, and G. W. Peckham, Wichita Falls, party of the second part, on the forty acres directly south of the forty-six and a half acre lease out of the northwest corner of Survey No. 29, J. Pointevant Survey, Wilbarger County, Texas. For a period of five years, and a half of the one-eighth royalty in the following described land. The party of the second part agrees to pay the party of the first part, a cash consideration of $26,000.00 for the property and leases. George Peckham paid $5,000.00—I do not have the check, but here is the slip that
545 was in there. The records indicate that G. W. Peckham paid George $5,000.00 on February 8, 1926, being cleared February 10, 1926, against his account with our bank. I do not have the deposit slip from Mr. George, where it was deposited. There was a cashier's check purchased for $5,000.00 by W. N. George, I believe it is, I can look at the record, but I believe that is correct. That amount of $7,000.00 was not run through to the credit of Warlick. This was held with the escrow agreement, and when the escrow was closed on the 26th of February, 1926, received a $21,000.00 check of George Peckham's and the $5,000.00 escrow, that is the set up here. As to what happened to the $2,000.00 of George's as shown by the February 10 deposit slip, this was just put in there and this agreement evidently came in in the place of that. I would be glad to look that up and see if there was not a cashier's check for $5,000.00 of George there.

The next is check No. 160, dated February 9, 1924, payable to G. W. Peckham for $2,500.00 on Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank, indorsed G. W. Peckham; on February 9, 1924, a deposit to G. W. Peckham's account for $2500.00, handled by teller No. 7. No other marks of identification. I am of the opinion that that is the check so deposited. The same item.

The next is a check dated February 29, 1924, No. 169, payable to the order of G. W. Peckham, $1,200.00, signed Wichita Royalty Company by E. E. Scannell, drawn

546 on the City National Bank of Wichita Falls, indorsed G. W. Peckham. On the 29th of February, I have a deposit of $1,200.00, to the account of G. W. Peckham. No marks of identification other than the same teller handled both items, and I am of the opinion that that is the check so deposited.

The next item is a check dated March 1, 1924, No. 171, payable to the order of G. W. Peckham for $500.00, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank indorsed G. W. Peckham. I have a deposit slip dated March 4, 1924, for $500.00 to G. W. Peckham. There are no other marks of identification other than the teller's stamp indicating that he handled both items, and I would be of the opinion that that check was the one so deposited.

The next item, a check dated March 17, 1924, No. 185, payable to the order of G. W. Peckham for $9,250.00, drawn on the Wichita Royalty Company by E. E. Scannell on the City National Bank, indorsed G. W. Peckham. I have a deposit slip, March 18, 1924, totaling $9,292.36. This check is the one handled because it has the teller's number on it, 7748, on the deposit, and on the back of the check, that is the identical check so deposited.

I next have a check dated March 31, 1924, No. 188, payable to the order of G. W. Peckham for $500.00, drawn by the Wichita Royalty Company by E. E. Scannell on the City National Bank, and indorsed G. W. Peckham. Deposited by G. W. Peckham on March 29, 1924, in his deposit, totaling $1,151.58. This check is in that
547 list, has the teller's number, 7,702 on the deposit slip on the back of the check.

The next is a check dated April 30, 1924, No. 205, payable to the order of G. W. Peckham for $500.00, drawn on the Wichita Royalty Company by E. E. Scannell, on the City National Bank, indorsed G. W. Peckham. I have a deposit dated May 1, 1924, to G. W. Peckham for $500.00. No marks of identification other than the regular stamp. I am of the opinion that that check was the one, I am not positive.

The next check is dated June 28, 1924, No. 232, payable to G. W. Peckham for $500.00, drawn on the Wichita Royalty Company by E. E. Scannell, on the City National Bank, indorsed G. W. Peckham. I have a deposit slip on June 28, 1924, to the account of G. W. Peckham for $949.18. In this list of checks there is one for $500.00. No marks of identification other than the teller handled both items, and I am of the opinion that that check was so deposited.

Next I have a check dated July 30, 1924, No. 247, payable to G. W. Peckham for $500.00 on the Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank, indorsed G. W. Peckham, on August 1, 1924. The deposit totals $564.65. There is a $500.00 check in there. There is a teller's transit No. 6352 on the deposit slip, also on the check. That is the check deposited.

I next have check No. 251, July 31, 1924, payable to G. W. Peckham, $55.35, drawn on the Wichita Royalty Company by E. E. Scannell, on the City National Bank of Wichita Falls, indorsed by G. W. Peckham.
548 I have a deposit on August 1, 1924, totaling $564.65. There is a check of this amount in there. Teller's transit No. 6352, appears on the deposit slips, also on the check. That check was deposited to his account.

The next check is dated September 30, 1924, No. 272, $500.00, payable to G. W. Peckham, on the Wichita Royalty Company, by E. E. Scannell, drawn on the City National Bank and then indorsed G. W. Peckham.

You next place before me a group of checks, which I will identify and describe and tell what disposition, as reflected by the bank records, was made, of the various parties.

I have a deposit slip on October 18, 1924, totaling $900.00, $500.00 check listed. No marks of identification other than the teller handled both items, and I am of the opinion that that is the check deposited.

I have here a check dated October 31, 1924, No. 286, payable to G. W. Peckham for $500.00, signed Wichita

Royalty Company by E. E. Scannell, drawn on the City National Bank and indorsed G. W. Peckham. I have a deposit slip on August 21, 1931, for $500.00. No marks of identification other than the teller handled both items. The same slip, and I am of the opinion that that check was the one deposited.

I have a check dated July 2, 1924, No. 237, payable to the order of the Security National Bank, in the amount of $7,000.00. This check is signed Wichita Royalty Company by E. E. Scannell, and drawn on the City
549 National Bank and indorsed Security National Bank of Wichita Falls, the date is indistinct, it came through the Security National Bank and the Security National Bank sent it to us and we paid it, and that is their indorsement where it came from.

I have a check dated November 29, 1924, No. 304, payable to G. W. Peckham for $500.0, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank, Wichita Falls, indorsed G. W. Peckham. On November 29, 1924, there was a deposit to the account of G. W. Peckham for $4,000.00. In that list of checks there was one for $500.00 handled by the same teller, both items, and I am of the opinion that this is a check deposited to that account.

The next check, dated December 23, 1924, No. 317, payable to the order of G. W. Peckham, for $695.00, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank, indorsed G. W. Peckham. On December 23, 1924, I have a deposit slip totaling $702.37. Two items, one check for $695.00. No other marks of identification. I am of the opinion that that is the check deposited.

Check dated December 31, 1924, No. 320, payable to G. W. Peckham for $500.00, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank, indorsed G. W. Peckham. Deposit on January 3, 1925, totaling $5,513.00. In that list of checks there is one for $500.00, no other marks of identification and I am
550 of the opinion that that is the check deposited. The perforated date is the same as the deposit

slip. That is also true as to all of the checks that I have testified to, the perforation date and the date of the deposit slips which I have identified agree. In my answers hereafter, I will identify the perforation date with the date of the deposit slip to which I refer.

I have a check dated February 4, 1925, No. 338, payable to the order of G. W. Peckham for $400.00, drawn on the Wichita Royalty Company by E. E. Scannell, on the City National Bank, Wichita Falls, indorsed G. W. Peckham. I have a deposit slip of February 5, 1925, totaling $11,420.33. The teller's transit Number 7709 appears on the deposit slip, also on the check. This is the check that was deposited to that account. $400.00 check was listed in that deposit.

The next is check dated February 25, 1925, No. 347, payable to G. W. Peckham for $400.00, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank, indorsed G. W. Peckham. Paid on March 5, 1925. I have a deposit slip to G. W. Peckham on the same date for $400.00, the teller handled both items, and I am of the opinion that that is the check deposited.

Next is a check dated March 31, 1925, No. 357, payable to G. W. Peckham for $400.00, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank, indorsed G. W. Peckham, paid April 2, 1925. April 2, 1925, I have a deposit totaling $425.00, G. W. Peckham, there is a $400.00 check listed on this deposit, the same fellow handled both items, and I am of the opinion that that is the check deposited.

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Check dated April 30, 1925, No. 370, payable to the order of G. W. Peckham for $400.00. Signed Wichita Royalty Company by E. E. Scannell, and drawn on the City National Bank of Wichita Falls, and indorsed G. W. Peckham. Paid May 2, 1925. I have a deposit slip dated the same day for $400.00, to the account of G. W. Peckham. The same teller handled both items, and I am of the opinion that is the check so deposited.

Check dated May 5, 1925, No. 373, payable to the order of G. W. Peckham for $2,500.00, signed Wichita Royalty

Company by E. E. Scannell, drawn on the City National Bank, indorsed G. W. Peckham, paid May 5, 1925. I have a deposit G. W. Peckham's account on May 5, 1925, for $2,500.00. This check and deposit was handled by the same teller, and I am of the opinion that that is the check deposited.

Check dated May 25, 1925, No. 378, payable to the order of G. W. Peckham for $400.00, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank, indorsed G. W. Peckham. Check paid on June 2, 1925, and on that date G. W. Peckham has a deposit of $400.00. The same teller handled both items, and I am of the opinion that that is the check deposited.

Next check dated June 24, 1925, No. 385, payable to the order of G. W. Peckham, in the amount of $6,000.00, signed Wichita Royalty Company by E. E. Scan-
552 nell. This check is canceled paid June 25, 1925. Our ledger indicates that there was a $6,000.00 check paid on June 20, 1925. This check was on the Security National Bank and was later changed to the City National Bank. It was cleared by the City National Bank on June 25. Indorsement was canceled, check marked "Insufficient" and then that is scratched out. I have a deposit on June 24, 1925, to the account of G. W. Peckham for $6,000.00, and this was handled by teller No. 8, which is canceled paid on the 25th, and our ledger shows there was a $6,000.00 check paid—I am in error, I was looking at the wrong sheet. That check was paid by the City National Bank on May 25. There was a deposit to G. W. Peckham on the 24th for $6,000.00, was handled by the same teller, and there are no other marks of identification, and I am of the opinion that that is the check. There is a discrepancy between the perforated date of the payment of the check and the date of deposit, I can explain that in this way: This was run to the Security National Bank, indorsed by us on the 25th, that would have gone out in the afternoon and cleared the following morning, but it came back that day and was paid by the bank that day, it was returned from the Security National Bank which

was the 25th. It originally was drawn on the Security National Bank, but that bank did not have the money to honor the check, and it is marked "Insufficient." It came back and the name was changed from the Security to the City National Bank and was paid by the City National Bank.

553 I have a check dated June 29, 1925, No. 387, payable to the order of G. W. Peckham for $5,000.00, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank of Wichita Falls, indorsed by G. W. Peckham. Check paid on June 29, 1925. June 29, 1925, there was a deposit totaling $5,500.00, to be credited to G. W. Peckham. There was a check in that deposit of $5,000.00, the item was handled, both items, handled by the same teller, and I am of the opinion that that is the check deposited.

Check dated June 30, 1925, No. 388, payable to the order of G. W. Peckham in the amount of $400.00, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank, indorsed G. W. Peckham and paid on July 7, 1925. On July 7, 1925, there was a deposit totaling $451.50 to G. W. Peckham, and in that list of checks on that deposit, there was one for $400.00. I am of the opinion that that is the check so deposited.

Check dated July 31, 1925, No. 400, payable to the order of G. W. Peckham for $400.00, signed Wichita Royalty Company by E. E. Scannell, and drawn on the City National Bank of Wichita Falls, indorsed G. W. Peckham. Paid August 3, 1925. I have a deposit slip of August 3, 1925, to the account of G. W. Peckham totaling $837.92. Two checks, one of them was for $400.00, and I am of the opinion that this is one of the checks so deposited.

Check dated August 31, 1925, No. 411, payable to G. W. Peckham for $400.00, signed Wichita Royalty Company

554 by E. E. Scannell, drawn on the City National Bank, Wichita Falls, indorsed G. W. Peckham. Paid by the City National Bank on September 10, 1925. I have a deposit to G. W. Peckham's account on

the same date, totaling $785.94, there is a $400.00 check in that list of checks, on that deposit, on that day, and I am of the opinion that that is the check.

Check dated September 30, 1925, No. 422, payable to the order of G. W. Peckham for $400.00, signed Wichita Royalty Company, by E. E. Scannell, drawn on the City National Bank, indorsed G. W. Peckham. Paid on September 30, 1925. Deposit of the same date to G. W. Peckham's account for $453.92. There is a check for $400.00 listed on there, with no other marks of identification other than the teller handled both items. I am of the opinion that that is the check deposited.

Check dated October 8, 1925, No. 427, payable to the order of the City National Bank for $5,500.00, drawn by the Wichita Royalty Company, signed E. E. Scannell, check drawn on the City National Bank, no indorsement on it. I have a deposit to the account of G. W. Peckham on October 8, 1925, the day this check was canceled, of $5,500.00, handled by the same teller. No other marks of identification, and I am of the opinion that that is the check deposited.

I have a check dated October 31, 1925, No. 433, for $400.00, payable to the order of G. W. Peckham, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank and indorsed G. W. Peckham. Check paid on November 2, 1925. November 2, 1925, there was a deposit to the account of G. W. Peckham for $400.00, the check and the deposit were handled by the same teller, and I am of the opinion that that is the check.

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Check dated December 1, 1925, No. 444, payable to the order of G. W. Peckham for $400.00, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank, indorsed G. W. Peckham. Check paid on December 3, 1925. December 3, 1925, I have a deposit totaling $5,291.44, to the credit of G. W. Peckham. There is a $400.00 check listed thereon, and I am of the opinion that that check was the one deposited.

Check dated December 28, 1925, No. 451, payable to the order of City National Bank for $1,250.00, signed

Wichita Royalty Company, by E. E. Scannell, drawn on the City National Bank. Notation on the back, credited to the account of G. W. Peckham. I have a deposit slip dated December 28, 1925, for $1,250.00. The check was deposited to his account.

Check dated December 31, 1925, No. 453, payable to the order of G. W. Peckham, for $400.00, signed Wichita Royalty Company, by E. E. Scannell, drawn on the City National Bank, indorsed G. W. Peckham. I have a deposit slip dated 12-31-25, that is the date the check was paid, for $400.00. Both items handled by the same teller. I am of the opinion that that is the check deposited to that account.

Check dated January 4, 1926, No. 452, payable to the order of G. W. Peckham, $5,000.00, paid January
556 4, 1926, drawn by the Wichita Royalty Company signed by E. E. Scannell, on the City National Bank, and indorsed G. W. Peckham. I have a deposit slip for $5,000.00, dated January 4, 1926, to G. W. Peckham, and the same teller handled both items, and I am of the opinion that that is the check so deposited.

Check dated January 11, 1926, No. 458, payable to the order of the City National Bank for $5,000.00, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank, no indorsement. Paid on January 11, 1926. I have a deposit slip dated the same day, to G. W. Peckham, for $5,000.00. I am of the opinion that that is the check and deposit slip.

Check dated January 18, 1926, No. 461, payable to the order of the City National Bank for $15,769.07, signed by the Wichita Royalty Company, by E. E. Scannell, drawn on the City National Bank, Wichita Falls, with no indorsement. I have a deposit slip dated January 18, 1926. This check was paid on January 18, 1926. This deposit slip is for the amount of $15,769.07, and that is the check deposited to that account.

Check dated January 30, 1926, No. 466, payable to the order of G. W. Peckham, for $400.00, signed Wichita Royalty Company, by E. E. Scannell. Check drawn on

Security National Bank, Wichita Falls, and indorsed G. W. Peckham. I have a deposit slip on February 2, 1926, for $400.00. Tellers transit No. 7890 appears on the check and on the deposit slip, and that check
557 was deposited to his account.

Check dated February 27, 1926, No. 477, payable to the order of G. W. Peckham for $400.00, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank of Wichita Falls, indorsed G. W. Peckham. Paid on February 27, 1926. Deposit slip to G. W. Peckham for $400.00, the same date. Both items handled by the same teller, and I am of the opinion that is the check deposited.

I have a check dated March 6, 1926, No. 478, payable to the order of City National Bank in the amount of $17,623.70, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank. The check was paid on March 6, 1926. On the same date there was a deposit to the account of G. W. Peckham for the same amount. The same teller handled both items, and I am of the opinion that that is the check so deposited.

I have a check dated March 31, 1926, No. 485, payable to the order of City National Bank in the amount of $7,500.00, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank. Paid on March 31, 1926. The same day there was a deposit to the account of G. W. Peckham, for $7,500.00. The same teller handled both items, and I am of the opinion that that was the check paid.

I have a check dated April 1, 1926, No. 487, payable to the order of G. W. Peckham, in the amount of $400.00, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank, indorsed G. W.
558 Peckham, and paid on April 3, 1926. The same day there was a deposit in the amount of $600.00 to G. W. Peckham and a check for $400.00 listed thereon. The same teller handled both items, and I am of the opinion that that was the check deposited.

Check dated May 3, 1926, No. 497, payable to the order of G. W. Peckham in the amount of $400.00, signed Wich-

ita Royalty Company by E. E. Scannell, drawn on the City National Bank, indorsed G. W. Peckham. Paid on May 5, 1926. No deposit slip on those dates, that was evidently cashed over the window—I could not swear that that is a fact. My best judgment from my examination is that it was cashed at the window.

Check dated May 20, 1926, No. 503. Payable to the order of G. W. Peckham, for $3,000.00, signed Wichita Royalty Company, by E. E. Scannell, drawn on the City National Bank of Wichita Falls, indorsed G. W. Peckham, and paid on May 20, 1926. On the same date there was a deposit for $3,000.00 to G. W. Peckham. Both items were handled by the same teller, and I am of the opinion that that was the same check deposited.

I have a check dated May 30, 1926, No. 505, payable to G. W. Peckham for $400.00, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank, and indorsed G. W. Peckham, paid on May 29, 1926. On the same date, I have a deposit slip to G. W. Peckham for $456.25. There is a check listed on this deposit slip for $400.00. The same teller handled
559 both items, and no other marks of identification, and I am of the opinion that that was the check deposited.

The next is a check dated May 29, 1926, No. 507, payable to the order of City National Bank for $1,500.00, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank and indorsed G. W. Peckham. Check paid June 2, 1926. On the same date, there was a deposit to the account of G. W. Peckham for $1,500.00. The same teller handled both items, and I am of the opinion that that is the check deposited.

I have a check dated June 15, 1926, No. 510, payable to the order of City National Bank for $4,500.00, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank. Paid June 16, 1926. I have a deposit on June 16, 1926, for $4,500.00, to G. W. Peckham. The same teller handled both items, and I am of the opinion that that was the item deposited.

The next, a check dated June 30, 1926, No. 512, payable to the order of G. W. Peckham, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank of Wichita Falls, indorsed G. W. Peckham. On July 6, 1926. Deposit slip to G. W. Peckham on July 6, 1926, totaling $442.00. There is a check for $400.00 listed therein. Both items handled by the same teller, and I am of the opinion that that is the check so deposited.

Next, a check dated July 13, 1926, No. 519, payable to the order of City National Bank for $1,000.00, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank, paid on July 15, 1926. I have a deposit on the same date for $1,000.00 to the account of G. W. Peckham, both items were handled by the same teller, and I am of the opinion that that was the check deposited.

560

A check dated March 6, 1926, No. 479, payable to the order of the Security National Bank for $6,000.00, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank. That was indorsed Security National Bank. The date of the indorsement I am unable to read. Paid by the City National Bank on March 10, 1926. I could not tell you what happened to the money, other than it went to the Security National Bank, came through the Security National Bank. The City National Bank paid the Security National Bank for it.

Next, a check dated July 31, 1926, No. 523, payable to the order of G. W. Peckham, for $400.00, signed Wichita Royalty Company by E. E. Scannell, and drawn on the City National Bank, indorsed G. W. Peckham. Paid on August 2, 1926. On August 2, 1926, there was a deposit to the account of G. W. Peckham, for $400.00. The same teller handled both items, and I am of the opinion that that was the check.

Next, check dated August 2, 1926, No. 525, payable to the City National Bank, for $4,000.00, signed Wichita Royalty Company by E. E. Scannell. Drawn on the

City National Bank. Paid on August 2, 1926. On the same date there was a deposit for $4,000.00 to
561 G. W. Peckham's account. Both items were handled by the same teller, and I am of the opinion that that was the check deposited.

Check dated August 27, 1926, No. 532, payable to the order of City National Bank, in the amount of $4,357.58, signed Wichita Royalty Company by G. W. Peckham, drawn on the City National Bank. Paid August 27, 1926. On the same day there was a deposit for $4,357.58, to the account of G. W. Peckham. The same teller handled both items, and I would be of the opinion that that was the check deposited.

I have a check dated September 30, 1926, No. 537, payable to the order of G. W. Peckham, for $400.00, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank, indorsed G. W. Peckham. Canceled paid September 30, 1926. On the same day there was a deposit to G. W. Peckham's account totaling $1,253.00. There is four checks. Check for $400.00 listed. The same teller handled both transactions, and I am of the opinion that that would be the check deposited.

A check dated October 13, 1926, No. 541, payable to the order of City National Bank $10,000.00, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank. Paid October 14, 1926. On the same date there was a deposit of $10,000.00 to G. W. Peckham. The same teller handled both transactions—both items—and I would be of the opinion that that was the check deposited.

562 Check dated October 30, 1926, No. 545, payable to the order of G. W. Peckham for $400.00, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank, indorsed G. W. Peckham. Paid on October 30, 1926. On the same day there was a deposit to the account of G. W. Peckham for $5,413.00. A $400.00 check listed thereon, both items handled by the same teller, and I am of the opinion that that was the check deposited.

Check dated November 20, 1926, No. 550, payable to the order of the City National Bank for $7,500.00, signed Wichita Royalty Company by G. W. Peckham, drawn on the City National Bank, Wichita Falls, Texas, indorsed on the back thereof, deposited in the City National Bank of Wichita Falls, Texas, to the credit of G. W. Peckham. He had a deposit on November 20, of $7,500.00 listed on the deposit slip as Wichita Royalty Company. That was the check deposited.

Check dated November 30, 1926, No. 552, payable to the order of G. W. Peckham for $400.00, signed Wichita Royalty Company, by E. E. Scannell, and drawn on the City National Bank of Wichita Falls, indorsed G. W. Peckham. December 2, 1926, it was paid. On the same date we had a deposit to G. W. Peckham for $1900.00 and a $400.00 check listed thereon. I am of the opinion that that was the check deposited.

December 2, 1926, Check No. 554, payable to the order of the City National Bank, $1,500.00, signed Wichita Royalty Company by E. E. Scannell, payable to the order of the City National Bank, drawn on the City
563 National Bank, indorsed G. W. Peckham by A. B. Check was paid on December 2, 1926. On the same date there was a deposit of $1900.00 and there was a $1500.00 check listed thereon. I am of the opinion that that was the check deposited.

A check dated December 22, 1926, No. 556a, payable to the order of G. W. Peckham, $538.16, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank, Wichita Falls, indorsed G. W. Peckham, paid January 4, 1927. I have a deposit slip dated January 3, 1927, totaling $998.16. There is a check for $400.00 listed thereon. I mean $538.16, listed thereon. I am of the opinion that that is the check deposited.

Check dated December 31, 1926, No. 564, payable to the order of G. W. Peckham, $400.00, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank, indorsed G. W. Peckham, paid January 4, 1927, and this $400.00 check—there is a $400.00 check

listed in that deposit of $998.16, and I am of the opinion that that check was the one deposited.

Check dated January 19, 1927, No. 571, payable to the order of City National Bank for $2,000.00, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank. Paid on January 19, 1927. The same day there was a deposit of $2,000.00 to G. W. Peckham's account. The same teller handled both items, and I am of the opinion that that was the check deposited.

564 Check dated January 31, 1927, No. 574, payable to the order of G. W. Peckham for $400.00, signed by the Wichita Royalty Company, by E. E. Scannell, drawn on the City National Bank of Wichita Falls, indorsed G. W. Peckham, paid on February 2, 1927. Deposit slip dated the same day, to the order of G. W. Peckham, for $454.76. There is a $400.00 check listed on that deposit. Both items handled by the same teller and I am of the opinion that that was the check deposited.

I have a check dated February 19, 1927, No. 579, payable to the order of City National Bank for $2500.00, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank. Paid on February 19, 1927. Deposit dated February 19, 1927, for $4,000.00. There is a $2,500.00 check listed in that deposit. Both items handled by the same teller, and I am of the opinion that that check was deposited.

Check dated February 28, 1927, No. 581, payable to the order of G. W. Peckham for $400.00, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank of Wichita Falls, and indorsed G. W. Peckham. On March 3, 1927, the check was paid. Deposit slip dated March 2, 1927, for $400.00. Both items being handled by the same teller, I am of the opinion that that was the check deposited.

Check dated March 1, 1927, No. 582, payable to the order of City National Bank, $500.00, signed Wichita Royalty Company, by E. E. Scannell, drawn on

565 the City National Bank, paid on March 8, 1927. I have a deposit slip here on March 8, to the ac-

count of G. W. Peckham on March 8, 1927, for $500.00. The notation says "Wichita Royalty Company." That is the check deposited.

March 31, 1927, check No. 594, payable to the order of G. W. Peckham, $400.00, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank. indorsed G. W. Peckham, paid April 2, 1927. I have a deposit to G. W. Peckham on April 2, 1927, for $400.00. I am of the opinion that that is the check deposited.

Check dated March 1, 1927, No. 583, to the order of City National Bank, $301.82, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank, indorsed G. W. Peckham, paid March 16, 1927. I have a deposit slip on the same date to G. W. Peckham, totaling $883.82. There is a check for $301.82, listed on that deposit slip, and I am of the opinion that that is the check deposited.

Check dated March 3, 1927, No. 591, payable to the order of City National Bank for $2,000.00, signed Wichita Royalty Company by E. E. Scannell, and drawn on the City National Bank, indorsed G. W. Peckham. Paid on March 23, 1927. I have a deposit slip on the same date to G. W. Peckham's account, totaling $2,037.02, and there is a $2,000.00 check listed, and I am of the opinion that that was the check deposited.

Check dated April 23, 1927, No. 602, payable
566 to the order of B. L. Fain, for $1,000.00, signed Wichita Royalty Company, by E. E. Scannell, drawn on the City National Bank, Wichita Falls, indorsed B. L. Fain, G. W. Peckham. Paid on April 23, 1927. Deposit slip on the same date to G. W. Peckham for $1,000.00. Both items were handled by the same teller, and I am of the opinion that that is the check deposited. I could not swear that that is the original signature of B. L. Fain. I am of the opinion that it was deposited to the account of G. W. Peckham.

April 30, 1927, check No. 604, payable to the order of G. W. Peckham for $400.00, signed Wichita Royalty Company, by E. E. Scannell, and drawn on the City Na-

tional Bank, indorsed G. W. Peckham, paid on April 30, 1927. I have a deposit on the same day to G. W. Peckham, for $400.00. Both items having been handled by the same teller, I am of the opinion that that was the check deposited.

Check dated May 6, 1927, No. 607, payable to the order of B. L. Fain, for $500.00, signed Wichita Royalty Company by E. F. Scannell, drawn on the City National Bank, indorsed B. L. Fain, and G. W. Peckham, paid May 6, 1927. Deposit on the same day to G. W. Peckham. Notation, "Wichita Royalty Company, $500.00." That is the check deposited.

Check dated May 16, 1927, No. 610, payable to the order of B. L. Fain for $1,000.00, signed Wichita Royalty Company by E. E. Scannell, drawn on the City
567 National Bank, Wichita Falls. Indorsed B. L. Fain, and G. W. Peckham, paid on May 16, 1927. I have a deposit to the account of G. W. Peckham on May 16, 1927, for $1,000.00. Those items being handled by the same teller, I am of the opinion that that was the check so deposited.

Check dated May 21, 1927, No. 614, payable to the order of G. W. Peckham, $400.00, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank, indorsed G. W. Peckham. Paid on June 8, 1927. I have a deposit on the same date, G. W. Peckham, $400.00. I am of the opinion that that was the check deposited.

Check dated June 18, 1927, No. 620, payable to the order of the City National Bank, $1,200.00, signed Wichita Royalty Company, by E. E. Scannell, drawn on the City National Bank, paid on June 18, 1927. I have a deposit on June 18, 1927, to G. W. Peckham for $1,200.00. Both items handled by the same teller, and I am of the opinion that that was the check deposited.

Check dated June 30, 1927, No. 623, payable to the order of G. W. Peckham for $400.00, signed Wichita Royalty Company, by E. E. Scannell, drawn on the City National Bank, indorsed G. W. Peckham. Dated on July 1, 1927. Same date there was a deposit of $400.00

to G. W. Peckham, and I am of the opinion that that was the check deposited.

568 Check dated July 21, 1937, No. 630, payable to the order of G. W. Peckham, for $400.00. Signed Wichita Royalty Company, by E. E. Scannell, drawn on the City National Bank, indorsed G. W. Peckham. Paid on August 1, 1927. At that time, a deposit on the same date to G. W. Peckham for $400.00. I am of the opinion that that was the check deposited.

Check dated August 16, 1927, No. 635, payable to the order of the City National Bank for $1,500.00, signed Wichita Royalty Company by G. W. Peckham, drawn on the City National Bank, paid August 16, 1927. I have a deposit slip to G. W. Peckham, August 16, 1927, for $1,500.00. I am of the opinion that that was the same check deposited.

Check dated September 3, 1927, No. 637, payable to the order of G. W. Peckham for $400.00, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank, indorsed G. W. Peckham, paid September 6, 1927. A deposit on the same date to G. W. Peckham, $400.00. I am of the opinion that that was the same check deposited.

The next check dated October 14, 1927, No. 650, payable to the order of City National Bank for $2,400.00, signed Wichita Royalty Company by E. E. Scannell, and drawn on the City National Bank of Wichita Falls. Paid on October 15, 1927. The same date there was a deposit to G. W. Peckham for $2,400.00. Both items were handled by the same teller, and I am of the opinion that that is the check so deposited.

569 Check dated November 1, 1927, No. 653, payable to the order of G. W. Peckham for $400.00, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank, indorsed by G. W. Peckham. Paid on November 5, 1927. I have a deposit to G. W. Peckham of the same date for $400.00. I am of the opinion that that was the check so deposited.

Check dated November 25, 1927, No. 657, payable to the order of City National Bank for $1,800.00, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank, to G. W. Peckham for $1,800.00, and I am of the opinion that that was the check deposited.

I have a check dated November 30, 1927, No. 659, payable to the order of G. W. Peckham for $400.00, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank, indorsed G. W. Peckham, paid on December 5, 1927, for $400.00. It says Wichita Royalty Company, that is the check so deposited.

Next check, December 27, 1927, No. 672, payable to the order of G. W. Peckham for $400.00, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank of Wichita Falls, indorsed G. W. Peckham. Paid December 27, 1927. The same date there was a deposit to G. W. Peckham for $400.00. Notation, Wichita Royalty Company check. This check was deposited to G. W. Peckham's account.

The next check is dated December 20, 1927, No. 670, payable to the order of G. W. Peckham, for
570 $147.33, signed Wichita Royalty Company by G. W. Peckham, drawn on the City National Bank of Wichita Falls, indorsed G. W. Peckham. Paid December 21, 1927. There was a deposit of that amount to G. W. Peckham's account on the same date. I am of the opinion that was the check deposited.

Check dated January 1, 1928, No. 684, payable to the order of G. W. Peckham, for $400.00, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank, indorsed by G. W. Peckham. Paid January 31, 1928. Deposited to G. W. Peckham's account on that date, $400.00, and I am of the opinion that that was the check which he deposited.

February 29, 1928, check No. 692, payable to the order of G. W. Peckham for $400.00, signed Wichita Royalty Company, by E. E. Scannell, on the City National Bank, indorsed, G. W. Peckham. Paid on March 6, 1928. And on March 6, 1928, there is deposited to

G. W. Peckham's account $458.00, $400.00 check listed, and I am of the opinion that that was the check so listed.

Check dated March 31, 1928, No. 701, payable to the order of G. W. Peckham, for $400.00, signed Wichita Royalty Company by E. E. Scannell and drawn on the City National Bank, indorsed G. W. Peckham. Paid March 31, 1928. The same date there was a deposit to G. W. Peckham's account for $400.00. I am of the opinion that that was the check deposited.

571 Check dated April 6, 1928, payable to the order of the City National Bank. No. 702. Payable to the order of City National Bank for $548.12, signed by the Wichita Royalty Company, by E. E. Scannell, drawn on the City National Bank. Paid on April 6, 1928. The same date there was a deposit for $548.12, to G. W. Peckham's account. I am of the opinion that that was the check deposited.

Check dated April 11, 1928, No. 706, payable to the order of G. W. Peckham, $169.75, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank, indorsed G. W. Peckham. Paid April 11, 1928. On the same date a deposit of $169.75 for G. W. Peckham's account. I am of the opinion that that was the check so deposited.

Check dated April 20, 1928, No. 710, payable to the order of the City National Bank, $1,850.00, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank. Paid April 23, 1928. On the same date deposit to G. W. Peckham's account for $1,850.00. I am of the opinion that that was the check deposited.

Check dated April 30, 1928, No. 713, payable to G. W. Peckham for $400.00, signed Wichita Royalty Company, by E. E. Scannell, drawn on the City National Bank, indorsed G. W. Peckham. Paid May 1, 1928. On the same date a deposit to G. W. Peckham for $459.00. There was a $400.00 check listed, on this deposit, and I am of the opinion that that was the check.

572 May 21, 1928, check No. 718, payable to G. W. Peckham, for $140.68, signed Wichita Royalty Company by E. E. Scannell, and drawn on the

City National Bank, Wichita Falls, indorsed G. W. Peckham, paid May 21, 1928. The same date a deposit to G. W. Peckham's account for $140.68, and I am of the opinion that that was the check deposited.

Check dated May 31, 1928, No. 720, payable to the order of G. W. Peckham, $400.00, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank, indorsed G. W. Peckham, paid June 12, 1928. Deposit on the same date to G. W. Peckham for $400.00. I am of the opinion that that was the check deposited.

Check dated July 2, 1928, No. 727, payable to the order of G. W. Peckham, for $400.00, signed Wichita Royalty Company by E. E. Scannell, and drawn on the City National Bank, indorsed G. W. Peckham. Paid on July 9, 1928. July 9, 1928, there is a deposit to G. W. Peckham's account for $1,900.00, check of $400.00, Wichita Royalty Company listed thereon, that check was deposited to that account.

Check dated July 31, 1928, No. 738, payable to the order of G. W. Peckham for $400.00, signed Wichita Royalty Company by E. E. Scannell, on the City National Bank, indorsed G. W. Peckham. Paid August 7, 1928. The same day there was a deposit of $400.00 to G. W. Peckham's account, and I am of the opinion that that was the check deposited.

573 Check dated August 21, 1928, No. 747, for $400.00, payable to G. W. Peckham, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank and indorsed G. W. Peckham. Paid September 10, 1928. There was a deposit on September 10, 1928, to G. W. Peckham's account for $4,744.25. Wichita Royalty Company check was listed therein. That check was deposited to G. W. Peckham's account.

Check dated September 27, 1928, No. 452, payable to the City National Bank, for $424.66, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank. Notation on the back, "Deposited in the City National Bank Wichita Falls, to the credit of G. W.

Peckham." That was credited to his account on September 27, 1928.

Check dated October 1, 1928, No. 754, payable to the order of G. W. Peckham, for $400.00, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank, indorsed by G. W. Peckham. Paid October 12, 1928. That check was deposited to his account on October 12, and a deposit totaling $600.00.

Check dated October 31, 1928, No. 762, payable to G. W. Peckham, $400.00, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank indorsed G. W. Peckham. Paid November 1, 1928. Deposited to G. W. Peckham's account November 1, 1928, together with other checks totaling $1,015.00.

Check dated November 30, 1928, No. 767, payable to G. W. Peckham for $400.00, signed Wichita
574 Royalty Company by E. E. Scannell, drawn on the City National Bank, indorsed G. W. Peckham. Paid—I cannot read the cancellation on this—but that was deposited to G. W. Peckham's account on November 30, 1928.

Check dated December 31, 1928, No. 775, payable to the order of G. W. Peckham for $400.00, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank, indorsed G. W. Peckham. December 31, 1928, the check was paid by deposit on the same date, $400.00, to G. W. Peckham's account. No other identifications other than the same teller handled both items, and I am of the opinion that that was the check so deposited.

Check dated January 30, 1929, No. 785, payable to G. W. Peckham, for $400.00, signed Wichita Royalty Company, by E. E. Scannell, drawn on the City National Bank, indorsed G. W. Peckham. Paid on February 5, 1929. Deposited to G. W. Peckham's account on the same day.

Check dated March 1, 1929, No. 793, payable to the order of G. W. Peckham, $400.00, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank, indorsed by G. W. Peckham, deposited to the account of G. W. Peckham on March 8, 1929.

Check dated March 26, 1929, No. 797, payable to the order of G. W. Peckham for $400.00, signed Wichita Royalty Company by E. E. Scannell, on the City
575 National Bank, indorsed G. W. Peckham. Paid on March 26, 1929, and deposited on the same day to G. W. Peckham's account.

Check dated April 30, 1929, No. 806, payable to G. W. Peckham, for $400.00, signed Wichita Royalty Company, by E. E. Scannell, and drawn on the City National Bank, indorsed G. W. Peckham. Paid on May 1, 1929, deposited to G. W. Peckham's account on the same day.

Check dated May 31, 1929, No. 813, payable to G. W. Peckham for $400.00, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank, indorsed G. W. Peckham, paid on May 31, 1929, and deposited to G. W. Peckham's account on that date.

Check dated July 31, 1929, No. 829, payable to G. W. Peckham for $400.00, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank, indorsed G. W. Peckham. Paid August 2, 1929, and deposited to G. W. Peckham's account on the same day.

Check dated July 1, 1929, No. 821, payable to G. W. Peckham for $400.00, signed Wichita Royalty Company, by E. E .Scannell and drawn on the City National Bank indorsed G. W. Peckham. Paid on July 9, 1929. Deposit on the same day for $400.00 to G. W. Peckham's account. Both of those items were handled by the same teller, and I am of the opinion that that was the check so deposited.

576 Check dated August 30, 1929, No. 837, payable to the order of G. W. Peckham, $400.00, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank, indorsed G. W. Peckham. Paid on September 5, 1929, and deposited to G. W. Peckham's account on the same date, together with other checks, making a total of $481.50.

Check dated September 30, 1929, No. 843, payable to the order of G. W. Peckham for $400.00, signed Wichita Royalty Company, by E. E. Scannell, drawn on the City

National Bank, indorsed G. W. Peckham. Paid October 2, 1929, and deposited to his account on that date.

Check dated October 31, 1929, No. 852, payable to the order of G. W. Peckham for $400.00, signed Wichita Royalty Company by E. E. Scannell, drawn on the City National Bank, indorsed G. W. Peckham. Paid November 1, 1929. Deposited to G. W. Peckham's account on that date.

I have been testifying from the original canceled checks of the Wichita Royalty Company that were charged against the Wichita Royalty Company's deposit account with the City National Bank of Wichita Falls, Texas. The first checks this morning were the Security National Bank's. The checks of the Wichita Royalty Company have printed on their back "Indorsement hereon by the payee constitutes acknowledgment of full payment of the items listed on accompanying remittance statement. No other receipt required." Each of these checks shows to have been perforated at its top. That could
577 mean that the check was drawn out of a check book. None of those checks have perforations at either end, nor does it have perforations at the bottom. We have had check books where they were torn out at the top, and where they were torn out on the end, we do not have any of those now. They are not glued at the top like a counter check, they are perforated. As a check of a business firm, it would reasonably indicate that that was a voucher check. In describing these checks, I have said they were drawn by the Wichita Royalty Company by E. E. Scannell, or G. W. Peckham, as the facts were. After the signature of E. E. Scannell, on all of the checks that he signed, appeared the words, "for the trustee." The word "for" was written on there, some of them. In the early part of the history of these transactions, the word "for" was written in ink, and in the latter history the words "for trustee" was printed on there. Originally it was printed "Wichita Royalty Company by trustee," and a place left for the signature. This was during the period of time which Mr. Scannell wrote the word "for trustee."

I have here a contract signed by the Wichita Royalty Company by G. W. Peckham trustee, and the petroleum Royalties Corporation by Thomas H. White, agent.

Mr. Rogers:
We offer it in evidence.

(Marked "Defendant's Exhibit 16" as follows:)

578 DEFENDANT'S EXHIBIT 16.

The State of Texas,
County of Wichita.

This Sale Agreement and Escrow Contract entered into by and between the Wichita Royalty Company, a trust estate, acting herein by its duly authorized trustee, G. W. Peckham, hereinafter referred to as party of the First Part, and the Petroleum Royalties Corporation, acting herein by its agent, J. H. White, hereinafter referred to as party of the second part.

Witnesses:

The party of the first part is the owner, insofaras covered by this contract, of one-eighth of the one-eighth fee royalty being oil, gas and other minerals in and under and that may be produced from the following described land situated in Archer County, Texas:

Lots Number Thirteen (13) and Number Fourteen (14) in Block Twenty-seven (27) of the American Tribune New Colony Subdivision, as shown by the map or plat of the Deed Records of Archer County, Texas.

And the party of the first part hereby agrees to sell to the party of the second part an undivided one-eighth of the one-eighth fee royalty, as more particularly set out in the deed hereto attached and made a part hereof, and has executed a deed of conveyance to the party of

the second part, and in consideration of which the party of the second part hereby binds and obligates
579 itself to pay to the party of the first part the sum of Six Thousand Dollars ($6000.00), as follows:

Twenty Four Hundred Dollars ($2400.00) in cash, upon the execution of this contract, the receipt of which is hereby acknowledged.

Twelve Hundred Dollars ($1200.00) on or before December 25th, 1927.

Twelve Hundred Dollars ($1200.00) on or before January 25th, 1928.

Twelve Hundred Dollars ($1200.00) on or before February 25th, 1928.

Said three deferred payments are evidenced by promissory notes of the party of the second part, payable to the party of the first part dated November 25th, 1927, bearing interest from date at the rate of 8% per annum and the party of the second part agrees to execute these notes and place same in escrow with this contract. This contract, together with the deed of conveyance from the party of the first part to the party of the second part and the three notes above set out are to be placed in escrow in the City National Bank of Wichita Falls, Texas, which bank is hereby designated the escrow holder.

It is understood and agreed that the oil runs are to be collected by G. W. Peckham, Trustee, as above set out and turned over as collected to the party of the second part, provided no default has been made in the payment of any said three notes or interest by the party of
580 the second part. As said notes are paid by the party of the second part, the proceeds thereof are to be delivered to the party of the first part and when

all of said notes and interest have been paid, according to their reading, tenor and effect then the escrow holder is authorized to turn over the deed to the party of the second part. However, should the party of the second part refuse or fail to perform under this contract or pay any or all of said notes and interest as they become due, then the money paid to the party of the first part shall be held by it as complete liquidated damages, together with the return of the deed to the first party, and the party of the first part agrees to accept same as complete liquidated damages and the escrow holder, the City National Bank, is hereby authorized to redeliver to the party of the first part its deed of conveyance to the party of the second part and to return to the party of the second part any of the unpaid notes and this contract shall be at an end and of no further force or effect.

It is understood and agreed that the party of the second part is to receive the oil produced to the interest hereby conveyed as of 7:00 A. M. November 25th, 1927.

It is understood and agreed that the royalty hereby conveyed expires on March 1st, 1939, according to the reservation in the mineral deed from L. F. Wilson to G. W. Peckham dated March 8, 1924 and recorded in Volume 85, page 437, of the Deed Records of
581 Archer County, Texas, to which reference is hereby made for all purposes.

This contract being mutual, it is executed in triplicate this 25 day of November, A. D. 1927.

WICHITA ROYALTY COMPANY,
By G. W. PECKHAM, Trustee.
PETROLEUM ROYALTIES CORPORATION,
By JAMES H. WHITE, Agent.

The stipulations of this contract having been complied with to the satisfaction of all parties hereto insofar as

the City Nat'l Bank, Escrow Agent, is concerned, we hereby each and jointly release the City Nat'l Bank, Escrow Agent, from any further liability and declare escrow closed this the 28 day of February, 1928.

WICHITA ROYALTY CO.,
By G. W. PECKHAM, Trustee,
Party of the first part.
PETROLEUM ROYALTIES CORP.,
By JAMES H. WHITE, Agent,
Party of the Second Part.

Received of the City Nat'l Bank, Escrow Agent, Mineral Deed herein referred to, this the 28 day of February, 1928.
(Signed) JAMES H. WHITE.

582 Received 1208.00 1-9-28 Note #1.
WICHITA ROYALTY COMPANY,
By G. W. PECKHAM.

Received 1216.00. 1-25-28 Note #2.
WICHITA ROYALTY COMPANY,
By G. W. PECKHAM.

Received 1224.00. 2-28-28.
WICHITA ROYALTY COMPANY,
By G. W. PECKHAM, Trustee.

583 The Witness:

I have G. W. Peckham's deposit account here before me, on January 9, 1928 there is a credit of $1,200.00. It does not say from where the funds were derived. This says, "Received $1208.00." I do not have any idea as to the source of that amount of money. That is evidently an out-of-town check from the number on it. I will get you that information during the taking of this testimony. In addition to the $1200.00 deposit on January 9, 1928, I likewise find a deposit to his account on January 25, 1928, of $1,224.00; on February 29, 1928, $1,224.00; on

December 5, 1927, $2,400.00. This contract was executed in triplicate, the 25th day of November, 1927. The escrow check is dated December 5, 1927. This is just an envelop where it was kept and filed. This is the original record of the bank, you understand they put them in an envelop and keep them, for convenience. I will look up and testify later as to the source of those deposits to the account of G. W. Peckham, totaling $6,048.00, and analyze that escrow and be in position to tell whether or not from my investigation of the books and records of G. W. Peckham, out of the bank, whether or not those deposits are not the items that cleared through that escrow.

On February 15, 1928, $6,000.00 was deposited to the account of G. W. Peckham. There is no mark of identification on the deposit slip to show that a $6,000.00 cashier's check issued by the Wichita State Bank, payable to the order of W. C. Duncan, was deposited. The item was handled by both the cashier's check and the de-
584 posit, was handled by the same teller, and I would be of the opinion that that was the item. Mr. Peckham's indorsement is the last one upon the cashier's checks. The check is on the Wichita State Bank and Trust Company, cashier's check No. 12,328, payable to the order of W. C. Duncan, for $6,000.00, signed by W. L. Stewart Gill, Assistant Cashier, and indorsed payable to the order of G. W. Peckham, for Bristow Royalty, W. C. Duncan. Second indorsement, G. W. Peckham. It cleared through the City National Bank. It cleared on February 16, 1928, by the City National Bank and paid by the Wichita National Bank on February 16. 1928, the date of the check was February 6. It is my opinion that that item was deposited to the personal account of G. W. Peckham on the 15th of February, 1928. So far as I know, there was no escrow in our bank for that item, on the sale of that Bristow Royalty.

On June 22, 1923, G. W. Peckham paid personal indebtedness to the bank, $3,050.60. On April 1, 1924, G. W. Peckham owed the bank $7,048.07, and that was the same balance as of May 1. On March 18, 1924, Mr. Peck-

ham gave a check for $10,000.00, payable to the order of note, signed by Mr. Peckham. On March 18, 1924, he gave his check for $10,000.00, payable to the note department for payment of a note. That was credited to his personal liability to the bank, on March 17. On March 18, he issued his check to the note department for $10,026.75, and that was credited on the note of W. H. Peckham, No. 47,675. On March 7, 1924, the City National Bank loaned to W. H. Peckham, $10,000.00. On March 6, the bank
585 loaned G. W. Peckham $10,000.00; the records do not indicate the indorsements those notes bore. On March 17, there was a credit to the account of G. W. Peckham for $20,000.00. When that loan of March 6, to G. W. Peckham was made for $10,000.00, he did not owe the City National Bank any money. That credit consisted of a note of $10,000.00 for W. H. Peckham and a note of $10,000.00 for George Peckham. On the 6th day of March, one $10,000.00 note was executed and signed by one of the brothers, and on the next day a $10,000.00 note was executed and signed by the other brother, and the proceeds of the $20,000.00 loan was both deposited to the personal account of G. W. Peckham. Then on March 17, he paid $10,000.00 on one of those, and on March 18, he paid $10,000.00 on the other. On November 3, 1924, G. W. Peckham paid to the plaintiff bank $5100.00 upon his private debt. On May 12, he paid out of his personal account, $4,056.00 to the City National Bank on a debt to that bank. On June 11, 1925, he paid $66.67. I also have Mr. Peckham's check dated September 23, 1925, payable to the Highland Irrigation Company for $3,869.25, signed G. W. Peckham, paid by City National Bank, and paid September 24, 1925, indorsed Highland Irrigation Company. I do not have access to the books and records of the Highland Irrigation Company. I do have to the Marlborough Addition; and the Texas Investment Company. The Highland Irrigation Company is the company that these Marlborough purchasers and developers executed vendor liens to. From my investigation, I am not certain this $3,800.00 payment was made up-

586 on that obligation, I am not positive whether that was a down payment or a note, or what the particular item was for, I just know it was paid to the Highland Irrigation Company. I will be glad to look it up.

On January 5, 1925, I have a check payable to the Highland Irrigation Company for $812.00, signed by G. W. Peckham. This was for something personal he had bought from the company, the notation says upon four notes, $175.00, total $700.00. Interest on series $112.00. And Lots 11, 12, 13, 14, Block 44a, payable to Highland Irrigation Company, indorsed "pay to J. A. Kemp, Highland Irrigation Company by C. M. Crowell." The further indorsement, "pay City National Bank of Commerce, Wichita Falls, Texas, or order, J. A. Kemp, No. 76." I have a check dated January 11, 1926, payable to the Highland Irrigation Company, $454.50, signed G. W. Peckham. That was paid on January 12, 1926, and indorsed "Pay to the order of City National Bank, Wichita Falls, Texas, Highland Irrigation Company." That check is in the handwriting of J. T. Harrell, other than the signature, that was a payment on that land out there. If I understand it correctly, they bought two tracts of land out there and this was the original purchase on one of the tracts, that is the way I understand it from my examination. Mr. Peckham paid the bank out of his deposit account, $550.00 on May 15, 1926, by check dated May 14, 1926, payable to interest, $550.00, signed by G. W. Peckham. That was paid on May 15, 1926, and was interest on part of

587 his notes at that time. On August 10, he made a similar payment. On January 19, 1927, he paid $2,506.12. There was a check charged to his account on January 19, 1927, for $2,506.12, payable to "yourselves". On March 16, he paid the bank $1,500.00, out of his personal account. On October 19, 1927, he gave his check for $1,336.00, that was payable on note, $1,076.00, interest $260.00, that was paid on the note of Wichita Royalty Company on that date. The $520.00 check was payable to his personal obligations, October 19. Those checks being drawn against his personal account. On September

27, 1928, he paid $3,163.78, it was charged paid out of his personal account. He also paid his personal check on the note of Wichita Royalty Company for $424.66. I have a check dated November 1, 1928, payable to note interest, $4,200.00. $4,200.00 was credited to the account of Reverend J. W. Sweeton, for a note he owed. That is the Methodist preacher. I don't know whether that note was in the bank or not, but it was not a note of the City National Bank. I do not have any record of that note of any character whereby I could determine the dates or the rate of interest or the amount payable or the indorsements. Mr. Sweeton had a deposit account with our bank about that time. I have checked the deposit slips, and determined that the $4,200.00 was deposited to his credit. The check itself is written in Mr. Harrell's handwriting. Reverend Sweeton is the father of Mrs. Gest and W. J. Sweeton an attorney, and Clyde Sweeton, of Houston.

I have an amount here also, $2,013.33, dated
588 January 12, 1929, the check was paid on that date, that applied on the indebtedness to the City National Bank.

I have here a check dated March 10, 1923, No. 1253, payable to the order of City National Bank for $2,500.00. Drawn on the City National Bank by the Wichita Royalty Company, signed E. E. Scannell for trustee. On the back it says, "Credit to the account of B. L. Fain." On March 10, B. L. Fain's account was credited with $2,500.00. In my opinion, that is the same item.

I have a check here dated December 28, 1925, 451, payable to the order of the City National Bank for $1,250.00, drawn on the City National Bank by Wichita Royalty Company, signed E. E. Scannell for trustee. On the back, "credited to the account of G. W. Peckham." Deposited for the same account on the same day. I am sure that is the check that was deposited.

Check dated December 22, 1926, No. 556, payable to the order of G. W. Peckham for $700.00, drawn on the City National Bank of Wichita Falls, signed by E. E. Scannell for trustee, indorsed G. W. Peckham. I could not tell you

what happened to the money on that. Evidently it was cashed, because the account did not have a credit. The check is dated 12-22-26. I will look it up in the record and see if I can find out what became of the proceeds of that check.

Here is another one dated December 22, 1926, No. 556-a, payable to the order of G. W. Peckham for $538.16, drawn on the City National Bank by the Wichita Royalty Company, signed by E. E. Scannell for trustee, and indorsed G. W. Peckham. This check was paid on January 4, 1927. There is an item for the same amount in his deposit, the deposit slip dated January 3, 1927, and I am of the opinion that that is the same check deposited to that account.

589

I have a check dated December 7, 1926, No. 557, payable to the order of the City National Bank for $1,920.00, drawn on the City National Bank by Wichita Royalty Company signed by E. E. Scannell for trustee. It was in payment of a draft received from the Texas State Bank at Eastland, Texas, for $1,920.00. Notation, "description, draft papers attached, G. W. Peckham." It was City National Bank's collection No. 1,658. Received by the bank on October 3, 1926, and paid December 15 1926. Papers attached thereto. This notation says, "Draft with papers attached," and this mineral deed is signed by Joseph M. Perkins, and comes from the county of Eastland, and conveying all of section 54, W. D. Twitchel, map of sub-divisions of the Bravo Ranch Lands, located in Hartley County, Texas, containing 640 acres more or less, and it was for an undivided 1/16 of all oil and gas produced, or that may be produced. The conveyance named G. W. Peckham as grantee. It is my opinion that that is the instrument that was attached to the draft so drawn, and that the $1,920.00 check of Wichita Royalty Company took up that item.

In connection with the item of $1,920.00, that represented the purchase of a draft drawn by Joseph M. Perkins, on G. W. Peckham for a conveyance of 1/16 royalty in the Hartley County Land, and

590

Judge Rogers has exhibited to me a mineral deed, the original, taken from the files of the Wichita Royalty Company, conveying this interest in the minerals to G. W. Peckham, dated the 7th day of August, 1926.

Re-Direct Examination.

By Mr. Humphrey:

The instrument which you now hand me is another mineral deed taken from the files of the Wichita Royalty Company, conveying the identical interest received by G. W. Peckham, in the identical land, signed by G. W. Peckham, on the same date, to-wit, August 7, 1926, and acknowledged on the 15th day of December, 1926, conveying to the Wichita Royalty Company this identical interest. I have traced the funds from the books of the Wichita Royalty Company to see that that is the same, that the Wichita Royalty Company paid $1,920.00 for that interest, it was handled by the same teller.

Q. Does the voucher of the Wichita Royalty Company show that the Wichita Royalty Company paid—get the copy of the voucher on that transaction.

Mr. Rogers:

The Wichita Royalty Company, and its trustee, object and except to the evidence now submitted by counsel for the bank and parties other than the Cross complainant; for the reason that the matters sought to be introduced in evidence, affirmatively show upon
591 their face that the transactions between the Wichita Royalty Company and G. W. Peckham involves a dual dealing between the trustee as an individual, and himself as trustee, at a time long subsequent to his original acquiring of the property. The subject matter being minerals, and the value thereof being judicially known to be fluctuating, the deed to G. W. Peckham conveying, being acquired on or about August 7, 1926, and the conveyance by G. W. Peckham to the Royalty

Company, though dated as of the date of the prior dealing, yet not being acknowledged until December 15, 1926, months after his having acquired personally the interest, so that not alone is the instrument to the trust not binding upon it, because of the personal interest therein of the trustee himself, but as well because he bought it as an individual, rode the transaction for months, and then it appeared to him to be to his best advantage, conveyed it to his trust, to liquidate a charge which he had theretofore made to the books of the company, being $1,920.00, and thus make the books balance; which testimony is made applicable to the testimony offered by the bank, and that which may be subsequently offered in respect thereto.

Mr. Morrow:

In respect to that, the draft shows, that it came in in October, 1926, but the records also show that all these facts were fully known by the Royalty Company, as disclosed by their bocks and records, in 1926, and no complaint was made at the filing of the amended bill.

592 Mr. Rogers:

For the further reason, it is not shown that G. W. Peckham ever disclosed to any stockholder of the Wichita Royalty Company any facts relating thereto, and that no stockholder knew of the existence of such deed; and that the stockholders were not otherwise bound thereby, by ratification, estoppel or other proper defense.

(Which objection was by the Court overruled, to which the defendant, Wichita Royalty Company, then and there excepted).

This says in payment of full one-half royalty, 640 acres in Hartley County. The voucher is dated December 7, 1926, the same date as the check. I received this information from the copy of the voucher kept by the Wichita Royalty Company, from the original books. The draft

shows to have been paid December 15, 1926. It shows that it was accompanied by a transfer from Perkins to Peckham. As to the file marks of the county clerk of Hartley County on these documents, assignment from Joseph M. Perkins to G. W. Peckham, was filed for record December 31, 1926, at 9:00 o'clock A. M. by A. B. Colinder, County Clerk, Hartley County, Texas, by R. A. Defee, Deputy. Assignment G. W. Peckham, Wichita Royalty Company filed December 31, 1926, at 9:00 A. M. by the same county clerk and by the same deputy, indicating that they both were received on the same day in the same mail, and filed at the same time.

Mr. Humphrey:

In connection with this instrument, we offer in evidence a draft, memorandum of the draft, and we would like to offer in evidence the original copy of the voucher.

593 PLAINTIFF'S EXHIBIT No. 39. 1

"City National Bank.

16158.

Wichita Falls, Texas ....., 192..

Received the following items listed for collection from:
Texas State Bank,
Eastland, Texas.

CITY NATIONAL BANK.

10/5/26.

| Your Letter Date or No. | Description | Amount |
|---|---|---|
| 156 10/4/26 | Dft. Papers Atcd. G. W. Peckham.. | 1,920.00 |

(On the above mentioned instrument appears the following stamp):

"City National Bank, Paid Dec. 15, 1926, 16. Wichita Falls, Texas."

The Witness:
That is the copy of the voucher that accompanied the check of $1,920.00, inquired about.

Mr. Humphrey:
We offer it in evidence.

594 (Marked "Plaintiff's Exhibit 40," and reading as follows:)

PLAINTIFF'S EXHIBIT No. 40.

"Wichita Royalty Company,
Wichita, Falls, Texas. No. 557.
December 7, 1926.

When Properly Indorsed Pay to the Order of City National Bank $1,920.00, Exactly Nineteen Hundred Twenty Dollars No Cents.

WICHITA ROYALTY COMPANY,
By E. E. SCANNELL,
For Trustee."

To The City National Bank,
88-1899 Wichita Falls, Texas.

(The above check bears the following stamp):

"City Natl Bank, 16, Wichita Falls, Texas."

(The above check bears the bank's perforated cancellation stamp as follows):

"Paid 12 15 26."

Mr. Humphrey:
Also offer in evidence the two deeds.

(The two deeds marked "Plaintiff's Exhibits 41 and 42 and reading as follows:)

595 PLAINTIFF'S EXHIBIT No. 41.

Assignment, Joseph M. Perkins, to G. W. Peckham.

Consideration, $10.00 and other valuable considerations.

Conveying 1/16 of all oil and gas produced or that may be produced on the following described land, to-wit:

All of Section No. 54, as the same is shown by the W. D. Twitchell map of the sub-divisions of the Bravo Ranch lands, located in Hartley County, Texas, containing 640 acres.

Lease to remain in force for five years after August 7, 1926, unless oil and gas, either of them, are being produced from said lands in paying quantities and as long thereafter as same is being produced.

Dated August 7, 1926.

Duly acknowledged by Joseph M. Perkins, before J. L. Cattingham, Notary Public in and for Eastland County, Texas, on the 29th day of September, 1926.

Filed for record December 31, 1926, at 9:00 o'clock A. M. and recorded December 31, 1926, at 11:30 o'clock A. M. in the deed records of said county in Vol. 55, on Page 539.

PLAINTIFF'S EXHIBIT No. 42.

G. W. Peckham, Wichita Falls, Texas, party of the first part, Wichita Royalty Company, Wichita County, Texas, party of the second part.

596 Consideration $10.00 and other valuable considerations.

Conveying 1/16 of all oil and gas produced or that may be produced from the above described land, to-wit: All of Section 54, as the same is shown by the W. D. Twitchell map of the sub-divisions of the Bravo Ranch lands, located in Hartley County, Texas, containing 640 acres, more or less.

Lease to run for a period of five years from August 7, 1926, unless at the expiration of said period of time oil and gas or either of them, are being produced from the land in paying quantities.

Dated August 7, 1926.

Duly acknowledged by G. W. Peckham, before H. C. Richardson, Notary Public in and for Wichita County, Texas on December 15, 1926.

Filed for record December 31, 1926, at 9:00 o'clock A. M. and recorded December 31, 1926, at 11:45 o'clock A. M. in the deed records of said county, in Volume 55, on page 540.

The Witness:

I have examined the books and records of the Wichita Royalty Company with the consent of the Wichita Royalty Company; included in the books and records is the copy of the voucher that I have testified about, the originals of which apparently on which the checks were issued. This copy of the voucher which I have read from is a correct copy of what the originals of the books of
597 the Royalty Company show. The books of the Wichita Royalty Company disclose their property, they have kept their property in an envelop and they were numbered, their deeds and all, if I remember correctly. I examined that envelop in the possession of the

auditor of the Wichita Royalty Company. That is known as property No. 94, it is listed as an asset of the Wichita Royalty Company, when I examined the books and records of the company. All these matters were found in the office of the Wichita Royalty Company that I have testified about, with reference to the deeds, copies of the voucher, the original checks that I have testified about, with the exception of the memorandum on the draft. I made this investigation since this suit has been pending in the Federal Court, or at least since its reversal by the Supreme Court of Texas, in 1935. I knew nothing about how it was handled prior to that time.

Re-Cross Examination.

By Mr. Rogers:

When I said apparently a voucher was attached to the check, I meant on examining the records of the Wichita Royalty Company that they kept a voucher of all of their checks. I do not know whether a voucher was attached to the check when it was honored by the bank or not. This draft drawn on G. W. Peckham, attached to which was a conveyance to G. W. Peckham lay unhonored in the bank here, from October 4, 1926 to December 15, 1926, and the man on whom it was drawn did not pay
598 it off during that time. I do not know whether a well was drilling during that time, in the vicinity of this property or not.

Mr. Rogers:

We renew our objections heretofore made, and make them specifically applicable to all the testimony listed by counsel for the bank, and move to strike the same for the reasons above shown.

The Witness:

The next check dated April 11, 1927, No. 598, payable to the order of B. L. Fain for $500.00, drawn on the City

National Bank by the Wichita Royalty Company, signed by E. E. Scannell for trustee, indorsed by B. L. Fain, cleared by Security National Bank on April 12, 1927, and paid by the City National Bank on the same date.

The next check dated December 20, 1927, No. 670, payable to the order of G. W. Peckham for $147.33, drawn on the City National Bank, Wichita Royalty Company, signed by G. W. Peckham trustee, indorsed G. W. Peckham. I have a deposit slip to the account of G. W. Peckham on December 21, 1927, for $147.33. I am of the opinion that that is the check so deposited.

The next check dated January 14, 1929, No. 778, payable to the order of G. W. Peckham for $21.63, drawn on the City National Bank by the Wichita Royalty Company, signed by E. E. Scannell, for trustee. It is indorsed G. W. Peckham. I presume that was cashed. There is no deposit to his account. It was cashed by teller No. 8. That is just my idea about it, there is no deposit for it. The check was paid on February 5.

599 The next check dated November 29, 1929, No. 857, payable to the order of Knight and Hines for $84.41, drawn on the City National Bank by Wichita Royalty Company signed by E. E. Scannell for trustee. Indorsed Knight and Hines, and paid on November 29, 1929. So far as I know that went to the credit of Knight and Hines. I imagine that went to the account that had purchased and was paying the indebtedness incurred in the purchase of the Porter Ranch, between Harrell and Peckham and Knight and Hines, but I would have to look it up to see.

The next is a check dated January 24, 1930, No. 880, payable to the Marlborough Addition for $1,500.00, drawn on the City National Bank by Wichita Royalty Company by E. E. Scannell for trustee, indorsed Marlborough Addition, Texas Investment Company of Wichita Falls, that was after the death of Mr. Peckham. That was deposited to the Texas Investment Company on January 25, 1930.

The next check dated May 13, 1930, No. 908, payable to the Texas Investment Company of Wichita Falls,

Texas, for $500.00 drawn on the City National Bank by Wichita Royalty Company, signed by E. E. Scannell for trustee, and on the back of it says, "Credit Texas Investment Company." That check was paid on May 14, 1930, and credited to the Texas Investment Company of Wichita Falls on the same date.

The next is a check dated December 17, 1930, No. 970, payable to the order of W. T. Knight, attorney-in-fact, for $102.83. Drawn on the Security National
600 Bank, signed by Wichita Royalty Company by E. E. Scannell for trustee. It is indorsed "W. T. Knight, attorney-in-fact, Knight & Hines, by A. H. Heron." That is all the checks I have here at this time.

I have before me a deposit ledger account of L. F. Wilson Company, March, 1924. On March 6, 1924, G. W. Peckham issued his check to L. F. Wilson for $20,000.00, paid by the City National Bank, March 7, 1924. It says, "Credit L. F. Wilson by J T. Young." Those figures below the indorsement in the amount of $2,017.74, means that the check was insufficient, and that was his balance. I mean by that, on March 6, the day the check came in, Mr. Peckham did not have that much money on deposit, and that $2,017.74 reflected the balance that he did have at that particular time, that check was deposited to the account of L. F. Wilson on March 6, 1924, the deposit slip reads, "$20,000.00 less cash, $1,000.00 given to the account of L. F. Wilson, credit for $19,000.00." That is shown on the deposit slip March 6, 1924. On March 7, that $20,000.00 deposit was made to the account of G. W. Peckham; that paid the overdraft and left an overdraft at the close of business that day of $1,917.74. That deposit of $20,000.00 to the account of G. W. Peckham consisted of a $10,000 note of George Peckham and a $10,000.00 note of W. H. Peckham. These moneys were deposited to the account of G. W. Peckham to liquidate that overdraft.

I have been with the plaintiff bank since November 23, 1923.

I have not been able to locate any financial
601 statement given by George Peckham to the bank in his lifetime, although such statement might have been given and withdrawn from the files, however I have looked through everything I can think of. I have available a little memorandum book of G. W. Peckham wherein he made certain statements in respect to the Gray and Wheeler County Royalties. This book says that it is a ledger. It is more or less a memorandum book of Mr. Peckham's that was loaned to us by W. H. Peckham, the administrator of his estate. It starts out here with office expense, lease, salary, stenographer's salary half expense of storage, etc., various transactions.

From my investigation I would say that Mr. Peckham did not keep a complete set of books.

On page 110 of this memorandum is a notation dated April 2, 1926, that is, it is under that date, I do not know whether that was the date of this transaction or not.

Mr. Rogers:

We offer in evidence that part of the book identified, beginning on Page 110, with the date line 4-2-26, and concluding with $10,600.00 on page 111, as follows:

"3-1-26, profit on Marlborough lots, $4,200.00.

"4-2-26, Paid B. L. Fain $1,000.00 for interest in dry hole, Okla. lease.

"Bought Kilgore royalty, Brown County, for $7,500.00, paid Britain commission of $750.00. Sold for $10,000.00. Profit $1,750.00.

"Bought Wheeler County Royalty for $44,800.00, as follows:

602 "Webb, $5,600.00.

"Johnson, $4,000.00.

"Noal, $5,000.00.

"Section 57, $8,400.00.

"Section 43, $2,000.00.

"Section 44, $4,000.00.

"Plumber, $8,000.00.
"Section 12, $8,000.00.
"Sold to Tolowa, $30,500.00.
"Sold Joe Art, $1,000.00.
"Sold J. T. Harrell, $1,000.00.
"Sold United Royalties $20,000.00.
"Sold balance to Wichita Royalty Company, $10,000.00, which was exact cost.
"Paid Scannell $600.00 profit.
"B. L. Fain, $6,500.00 commission on sale to United.
"Net profit $10,600.00."

The Witness:

According to the way we figure it, the property bought as shown by that memorandum and not conveyed to the Wichita Royalty Company or to Joe Art or Mr. Harrell or to the Tolowa Royalty Company, there is a balance of 1/512ths interest, and a royalty transferred by H. B. and Opal Hill. That is all of the west half of the southeast corner of Section 43, in Block 24, H. & G. N. R. R. Company survey, containing eighty acres of land more or less. As to that interest just described, the deed 603 is dated October 20, 1926, conveying 1/32nd interest. He sold all of that to other people except 1/512th, which he retained in his own name, the balance of which he conveyed to others. Aside from this small interest I have spoken of, I know of no other interest in the name of G. W. Peckham, in Gray and Wheeler County, Texas. It had been partly checked and we are trying to get a complete check of the balance of it now.

I have here another matter you have asked me about; on February 5, 1923, Mr. Peckham paid, upon his indebtedness to the bank $594.75. On March 5, 1923, he paid from that account $1,000.00 to the plaintiff bank on a note. On March 6, 1923, he paid his personal note to the bank, $500.00. On March 7, 1923, he paid upon his note to the bank, $500.00, the same amount on March 8, 1923. On April 23, 1923, he made another payment upon his note of $4,000.00 principal and $94.15. On May 14, 1923, he

made a payment to the bank of $1,008.65 on his personal note. On May 19, 1923, he made a payment upon his note to the bank of $889.66. On June 22, 1923, he paid $3,050.60 upon his personal indebtedness to the plaintiff bank, that was $3,000.00 principal and $50.60 interest. On August 10, 1923, he paid $3,985.78, to the plaintiff bank upon his personal indebtedness. On November 13, 1923, he paid $1,000.00 to the plaintiff bank out of his personal account upon his personal indebtedness to the bank. On November 20, 1923, he paid the plaintiff bank $2,000.00 out of his personal account upon his personal
604 indebtedness to the plaintiff bank. On November 22, 1923, he paid $1,000.00 to the plaintiff bank out of his personal account upon his indebtedness to the bank. On November 30, 1923, he paid $1,555.82 to the plaintiff bank out of his personal account upon his personal indebtedness to the bank. On February 4, 1924, he paid out of his personal account to the plaintiff bank upon his personal indebtedness, $67.67 interest on his note. On February 21, 1924, he paid to the plaintiff bank $8,022.38, all of that was not on his personal indebtedness, however. It was upon a check made payable to the plaintiff bank, that was disposed of as follows, he paid principal on a note of $5,067.67, and he had a rebate of $45.29, that was his personal note; then he made a payment on the note of the Griswold Oil Corporation of $3,000.00, my investigation does not disclose why he made the payment upon that obligation. On March 17, 1924, G. W. Peckham paid to the plaintiff bank out of his personal account, $10,000.00 on his personal indebtedness to the bank. On March 18, 1924, G. W. Peckham paid out of his personal account upon the indebtedness of W. H. Peckham, $10,026.26, which liquidated a prior note that W. H. Peckham had executed, and the proceeds of which being deposited to the personal account of G. W. Peckham. So that having himself been credited in his personal account with the proceeds of the loan made by W. H. Peckham for $10,000.00, he liquidated that item by paying the plaintiff bank on March 18, 1924, the sum of $10,026.75. On May

1, 1924, G. W. Peckham paid out of his personal
605 account upon his personal indebtedness to the plaintiff bank the sum of $2,048.07. He also paid from the same account and upon his personal indebtedness to the bank, on June 7, 1924, the sum of $4,027.47; on the same day he made an additional payment of $1,000.00 upon an indebtedness to the plaintiff bank out of his personal account. On June 11, 1924, he paid out of his personal account to the plaintiff bank, upon his personal indebtedness to the plaintiff bank, the sum of $2,034.22. On June 3, 1924, he paid to the plaintiff bank, upon a debt due the City National Bank of Wichita Falls, Texas, the sum of $967.67, that was upon his personal note. B. L. Fain was not an indorser upon it, it was renewed by B. L. Fain the same day. G. W. Peckham paid $967.67 and the balance of it was paid by B. L. Fain upon B. L. Fain's executing a new note to the bank. On October 30, 1924, G. W. Peckham paid, from his personal account in the plaintiff bank, to the plaintiff bank, upon his personal indebtedness the sum of $12,500.00. The next payment that G. W. Peckham made upon his personal indebtedness to the plaintiff bank out of his private account was October 31, 1924, $5,100.00. That credit was entered on November 3, 1924, upon a check dated October 31, 1924, and paid November 3, 1924—that is the cancellation date of the check. His liability account was credited with the item November 3, the same day the check was canceled paid. On November 10, 1924, Mr. Peckham paid from his personal account to the plaintiff bank, upon his personal in-
debtedness, the sum of $200.00. On November
606 29, 1924, G. W. Peckham paid from his personal account to the plaintiff bank, upon his personal indebtedness the sum of $16,069.99. On December 12, 1924, G. W. Peckham paid to the plaintiff bank out of his private account upon his personal indebtedness to the bank, $12,016.00, on February 5, 1925, G. W. Peckham paid on his personal account to the plaintiff bank, upon his private debt, the sum of $10,200.00. On February 18, 1925, G. W. Peckham paid out of his personal account

to the plaintiff bank upon his private indebtedness, the sum of $16,210.00. On February 24, 1925, G. W. Peckham paid out of his private account with the plaintiff bank, $6,010.67, but he did not owe that indebtedness, that was indebtedness of the Tolowa Royalty Company. I don't know whether B. L. Fain was the trustee of that royalty company or not. I don't know whether that note was of long standing or not, neither do I know whether G. W. Peckham was an indorser upon the obligation. The check was made payable "to you". I presume that was the bank. On April 7, 1925, G. W. Peckham, from his personal account with the bank, paid to the plaintiff bank, upon items of indebtedness to the bank, two items, one for $80.00 and the other for $12,162.66, that was upon his personal note. On May 12, 1925, G. W. Peckham made a payment of $4,056.00 to the plaintiff bank by check drawn on his private account, in payment of a personal indebtedness to the plaintiff bank. On June 11, 1925, G. W. Peckham paid the plaintiff bank $66.57 on his personal indebtedness to the bank out of his private account.

607 On July 7, 1925, G. W. Peckham paid to the plaintiff bank upon his private indebtedness, out of his personal account with the plaintiff bank, the sum of $12,072.00. On June 6, was a $220.00 payment on interest, out of his personal account and paid on his personal indebtedness. On November 17, 1925, he paid the plaintiff bank, out of his private account with the bank, and upon his personal indebtedness to the bank, the sum of $1,007.23, which was applied against three notes, according to my record; one note No. 61,539, which was his. At that time, he had four different notes in the bank, Nos. 63,296 and 61,679, and 70,064, that number should be 61,539. All of those notes were notes of G. W. Peckham to the plaintiff bank, and they were consolidated and renewed under note No. 70,064, after crediting interest upon it of $1,007.23, on November 17, 1925. On February 13, 1926, G. W. Peckham paid from his personal account to the plaintiff bank, upon his private indebtedness the sum of $550.00. On May 14,

1926, he similarly paid to the plaintiff bank $550.00 upon his personal debt. On August 11, 1926, G. W. Peckham from his personal account, upon his personal indebtedness, paid to the plaintiff bank the sum of $550.00, that was interest on a $28,050.00 note. On September 30, 1926, Mr. Peckham paid from his personal account to the plaintiff bank upon his private indebtedness, the sum of $503.10. On November 10, 1926, he paid from his personal account to the plaintiff bank, upon his private indebtedness the sum of $3,050.00. That was upon
608 his note to the bank, No. 81,324, dated August 11, 1926. On December 8, 1926, he paid from his personal account to the plaintiff bank $500.00, on the Wichita Royalty Company note. On January 19, 1927, he paid from his personal account to the plaintiff bank upon his personal debt, the sum of $2,506.12. On March 16, 1927, he paid from his personal account upon his private debt to the plaintiff bank the sum of $1,500.00. On April 22, 1927, he paid from his personal account to the plaintiff bank, upon his private debt the sum of $10,963.75. On August 23, 1927, Mr. Peckham paid from his personal account with the plaintiff bank, to the plaintiff bank upon his private indebtedness the sum of $350.00 as interest. On August 31, 1927, G. W. Peckham paid from his personal account to the plaintiff bank, upon the indebtedness of the Wichita Royalty Company, $500.00. That is note No. 1,587. On October 19, 1927, G. W. Peckham paid to the plaintiff bank upon his personal indebtedness from his personal account the sum of $540.00. On October 19, 1927, Mr. Peckham paid upon a note charged to the Wichita Royalty Company the sum of $1,336.00.

During the time above testified to, and about which I have been asked, in which some payments have been shown to have been applied upon the notes outstanding as a charge against the Wichita Royalty Company, I will state that there are no other payments by G. W. Peckham for the account of the Wichita Royalty Company that I know of.

609 On November 5, 1927, Mr. Peckham made a payment out of his personal account on the Wich-

ita Royalty Company note No. 1,587; On February 15, 1928, he made a payment of $3,485.33 on the Wichita Royalty Company note. On February 15, 1928, Mr. Peckham paid out of his account with the plaintiff bank, upon his personal indebtedness to the bank, the sum of $513.33. On July 20, 1928, Mr. Peckham paid from his personal account, upon his private debt to the plaintiff bank, the sum of $493.78. The payment of $424.66, on September 27, 1928, was paid by G. W. Peckham out of his private account and credited upon the obligation standing in the name of Wichita Royalty Company. On September 27, 1928, he made a payment to the plaintiff bank out of the personal account and upon his personal indebtedness to the plaintiff bank in the sum of $3,163.78. On November 1, 1928, Mr. Peckham paid from his personal account, to Mr. J. M. Sweeton, upon his indebtedness to Mr. Sweeton, the sum of $4,200.00. On December 4, 1928, Mr. Peckham made a payment from his personal account with the plaintiff bank, upon his private indebtedness to the bank, of the amount of $614.50. On January 11, 1929, G. W. Peckham paid upon his personal indebtedness to the plaintiff bank, from his personal account with the bank, the sum of $2,013.33. On May 11, 1929, he paid $373.76, interest on personal indebtedness. On June 4, 1929, G. W. Peckham, from his personal account with the plaintiff bank, on his private indebtedness, paid the sum of $20,214.44. On August 24, 1929, he paid $381.09 interest on his personal indebtedness. On September 7, 1929, he paid to the plaintiff bank, from
610 his personal account, upon his private indebtedness to the bank, the sum of $5,000.00. On October 25, 1929, G. W. Peckham paid from his personal account with the same bank, to the bank upon his personal indebtedness, the sum of $3,061.00, which was just a few days before he died. That is all I find paid on those notes.

I have here a list of G. W. Peckham's checks payable to the Wichita Royalty Company, I can have those checks assembled by this afternoon.

I have available the liability account of the Wichita Royalty Company from 1923, and subsequent years. I

will take up the liability record of the Wichita Royalty Company with the plaintiff bank for the year 1925. I have here one loan left over to the Wichita Royalty Company during that year, it originated December 4, 1924, and was paid on February 18, 1925, it was a ninety day loan and paid prior to maturity. The next loan is April 11, 1925, for $8,160.00. The amount of the first loan was $10,200.00. The one of April 11, 1925, was $8,160.00, which was paid June 19, 1925, before maturity, it was a ninety day note. The next loan was June 24, 1925, ninety-day loan for $15,000.00; on August 8, 1925, they paid $10,000.00 on that loan, and on August 24, 1925, they paid the balance of the loan, the entire loan was paid before maturity. January 16, 1926, the next loan, $15,300.00; the next loan March 1, 1926, for $25,000.00, and $500.00 interest. Those two loans made in the early part of
611 1926, were not paid at maturity. The March note of $25,000.00 was indorsed by G. W. Peckham.

These checks that I testified to the other day, and this morning, bear certain tellers' numbers; I would have to look at the deposit slip to tell what teller handled each item. Mr. Bomar is one of them, he is employed at the City National Bank now. Mr. R. W. Thomason was another one, I think his number was 7, and Mr. Bomar was No. 8. Mr. Thomason is with the First National Bank of Olney at this time. Mr. Jeffus cleared a few of them, he is in cage No. 6, he is here.

On February 10, 1930, the Texas Investment Company issued its check payable to the plaintiff bank for $75,000.00, I don't recall where that check is right now.

I will begin in January, 1923, and testify what sum or sums of money were paid by G. W. Peckham as an individual, to or for the account of the Wichita Royalty Company during the succeeding period of time. I have the first check dated January 13, 1923, payable to the Wichita Royalty Company for $240.84, signed G. W. Peckham, with a notation which says, "Oil runs." This check was paid on January 16, 1923, and indorsed on the back, "For deposit only, R. R. Robertson," as trustee,

Wichita Royalty Company, "509 Security National Bank, Wichita Falls, Texas," and paid by the City National Bank on January 16. I do not know for the payment of what oil runs that check was issued, and have
612 not tried to find out.

The next check dated January 16, 1923, payable to the Wichita Royalty Company for $855.54, signed G. W. Peckham, and it says, "Oil runs on nine acres, Hattie Vaughan." That was paid on January 16, 1923, indorsed "For deposit only, R. R. Robertson as trustee, Wichita Royalty Company, 509 Security Bank Building, Wichita Falls, Texas." Cleared by the Security National Bank January 18, and it was paid on the 18th. Those two checks, above mentioned, were in the handwriting of G. W. Peckham. Aside from the notation, I do not know for what oil runs that check was issued.

The next check dated February 14, 1923, payable to the Wichita Royalty Company for $3,000.00, signed G. W. Peckham, with a notation which says, "Payment on royalties sold to Harrell," this check is indorsed "For deposit only, R. R. Robertson, as trustee, Wichita Royalty Company, 509 Security Bank Building, Wichita Falls, Texas." Cleared by the Security National Bank on February 15, and paid by the City National Bank on February 15. I could not tell you what royalty was sold to Mr. Harrell, it just says, "Harrell." I do not know what Harrell.

Next check dated February 6, 1923, payable to the Wichita Royalty Company for $566.37, signed G. W. Peckham, oil runs on four acres, Hattie Vaughan, collected 1-27-23. Indorsed, "For deposit only, R. R. Robertson as trustee for Wichita Royalty Company, 509 Security National Bank Building, Wichita Falls, Texas." Cleared by the Security National Bank on February 21,
613 1923, paid by the City National Bank on the same date. I do not know anything about for what oil runs that was.

The next is February 16, 1923, payable to the Wichita Royalty Company for $449.82, check signed by G. W. Peckham, oil runs on nine acres, Hattie Vaughan, collected

2-2-23. Indorsed, "For deposit only, R. R. Robertson for trustee, Wichita Royalty Company 509 Security National Bank Building, Wichita Falls, Texas." Cleared February 1, 1923, and paid by the City National Bank on the same day.

The next check dated March 7, 1923, payable to Wichita Royalty Company for $259.90, signed G. W. Peckham, oil runs on nine acres, Hattie Vaughan, collected 3-3-23, indorsed "For deposit only, G. W. Peckham, as trustee, Wichita Royalty Company, 509 Security National Bank Building, Wichita Falls, Texas." Paid by the City National Bank on March 15, 1923. Deposited in the City National Bank to the credit of Wichita Royalty Company.

The next one is check dated March 7, 1923, payable to the Wichita Royalty Company for $500.00, signed G. W. Peckham, and it says, "On contract with Interstate Royalty Company on Seay Royalty." The check is indorsed "For deposit only, G. W. Peckham as trustee, Wichita Royalty Company, 509 Security National Bank Building, Wichita Falls, Texas." On March 16, 1923, deposited in the City National Bank to the Wichita Royalty Company's account.

614 Check dated March 17, 1923, payable to Wichita Royalty Company for $500.00, signed G. W. Peckham, "payment on twenty acres Roland Royalty." Check indorsed "for deposit only, G. W. Peckham as trustee Wichita Royalty Company, 509 Security National Bank Building, Wichita Falls, Texas." Deposited in the City National Bank to the credit of Wichita Royalty Company.

Check dated May 15, 1923, payable to Wichita Royalty Company for $234.05, signed G. W. Peckham. Oil runs on Grimshaw, March 12 to 31, 1923. Indorsed "For deposit only, G. W. Peckham as trustee, Wichita Royalty Company, 505 Security National Bank Building, Wichita Falls, Texas." Paid on May 16, 1923. Deposited to the account of Wichita Royalty Company, in the City National Bank.

Check dated May 25, 1923, payable to the Wichita Royalty Company for $302.98, signed G. W. Peckham. Oil

runs on Grimshaw for April, by Humble. Indorsed "For deposit only, G. W. Peckham as trustee, for the Wichita Royalty Company, 509 Security National Bank Building, Wichita Falls, Texas. Deposited in the City National Bank to the credit of Wichita Royalty Company.

The next check dated August 14, 1923, payable to the Wichita Royalty Company, $5,736.16, signed G. W. Peckham, and says, "Oil runs 12-7-22, to 7-15-23, 1/32nd Ellis Holmes sold by W. H. P. to W. R. Co." Indorsed "For deposit only, G. W. Peckham as trustee for Wichita Royalty Company, 509 Security National Bank Building, Wichita Falls, Texas." Paid on August 14, 1923. I will give a list of several checks in that deposit.

615 Check dated August 14, 1923, payable to Wichita Royalty Company, for $1,309.47, signed G. W. Peckham, and says, "Oil runs 1/9th to 7-15-23, on 1/64th, Eagle Pitcher, sold by Fain to Wichita Royalty Company." That check was indorsed "For deposit only, G. W. Peckham, as trustee, Wichita Royalty Company, 509 Security National Bank Building, Wichita Falls, Texas." Paid by the City National Bank August 14, 1923.

The next check, dated August 14, 1923, payable to the Wichita Royalty Company for $1,309.47, and signed G. W. Peckham, and says, "Oil runs, to 7-15-23, on 1/64th, Eagle Pitcher, sold by W. H. P. to W. R. Co." indorsed "For deposit only, G. W. Peckham as trustee, for Wichita Royalty Company, 509 Security National Bank Building, Wichita Falls, Texas." Paid by City National Bank on August 14-23.

The next check dated August 14, 1923, payable to Wichita Royalty Company for $2,356.74, signed by G. W. Peckham. Oil runs, 1/9 to 7-15-23, on 9/320ths, Eagle Pitcher, sold by Fain to W. R. Co. Indorsed "For deposit only, G. W. Peckham as trustee, Wichita Royalty Company, 509 Security National Bank Building, Wichita Falls, Texas." Paid by the City National Bank on August 14, 1923.

Those four checks, together with a cashier's check No. 79528, dated August 14, 1923, payable to the Wichita Royalty Company for $8,800.30, and indorsed "For deposit only, G. W. Peckham as trustee, Wichita Royalty Company, 509 Security National Bank Building, Wichita Falls, Texas," and paid by the City National Bank on August 14, 1923, were deposited to the account of Wichita Royalty Company ending August 14, 1923, and deposits totaling $19,512.14. This cashier's check was purchased by G. W. Peckham, with his check of the same date, payable to the City National Bank for $8,800.30. I do not know what that check was for. I do not have any information on any of those items, other than that shown on the face of the checks themselves.

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The next check dated August 15, 1923, payable to the Wichita Royalty Company, $199.92, signed by G. W. Peckham, and says, "Oil runs on thirty-five acres R. L. Eagle Pitcher, 7-16 to 7-31-23." Check indorsed "For deposit only, G. W. Peckham as trustee, Wichita Royalty Company, 509 Security National Bank Building, Wichita Falls, Texas," paid by the City National Bank August 15, 1923, and deposited to the account of Wichita Royalty Company in the City National Bank.

Check dated January 21, 1924, payable to the Wichita Royalty Company for $5,000.00, signed G. W. Peckham, indorsed "For deposit only, G. W. Peckham as trustee, Wichita Royalty Company, 509 Security National Bank Building, Wichita Falls, Texas." Paid on February 2, 1924, deposited to the account of Wichita Royalty Company in the City National Bank on the same day. I do not know anything about the purpose of that check.

I have a check dated February 6, 1924, payable to Wichita Royalty Company for $14.15, signed G. W. Peckham, and says, "Gas on Ellis Holmes', for September, 1923." Indorsed "For deposit only, G. W. Peckham, as trustee, Wichita Royalty Company, 509 Security National Bank Building, Wichita Falls Texas." Deposited to the account of Wichita Royalty

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Company on February 8, 1924. The same date that it was canceled paid.

I have a check dated April 15, 1924, payable to Wichita Royalty Company, for $184.54, signed G. W. Peckham, and says, "Oil runs last half of March, Texhoma-Staniforth lease, Archer County." Indorsed, "For deposit only, G. W. Peckham, as trustee, Wichita Royalty Company, 509 Security National Bank Building, Wichita Falls, Texas." Paid by City National Bank April 16, 1924, deposited to the account of Wichita Royalty Company on the same date.

The next I have a check dated April 9, 1924, payable to Wichita Royalty Company, for $141.38, signed G. W. Peckham, and says, "Oil runs, Texhoma-on Staniforth lease, first half of March," indorsed "For deposit only, G. W. Peckham, Trustee," the same as the others. Paid by City National Bank on April 16, 1924, deposited to the account of Wichita Royalty Company on the same date.

Check dated April 9, 1924, payable to Wichita Royalty Company for $525.07, signed by G. W. Peckham, and says, "For oil runs, Panhandle on R. M. F. first half of March." Indorsed, "For deposit only, G. W. Peckham, as trustee, Wichita Royalty Company, 509 Security National Bank Building, Wichita Falls, Texas." Paid on April
618 16, 1924, deposited to the account of Wichita Royalty Company, on the same day.

Next have a check dated April 24, 1924, payable to the Wichita Royalty Company for $375.55, signed G. W. Peckham, and says, "Panhandle lease, R. M. F. last half of March." Indorsed, "For deposit only, G. W. Peckham as trustee, for Wichita Royalty Company, 509 Security National Bank Building, Wichita Falls, Texas." Paid April 29, 1924. Deposited to the account of Wichita Royalty Company on the same day.

Check dated May 2, 1924, payable to Wichita Royalty Company, for $480.04, signed G. W. Peckham, Panhandle runs, first half of April, R. M. F. Indorsed, "For deposit only, G. W. Peckham, as trustee for Wichita Royalty Company, 509 Security National Bank Building, Wichita

Falls, Texas." That was deposited to the Wichita Royalty Company's account on the day that it was cancelled paid. May 7, 1924.

The next check dated April 29, 1924, payable to Wichita Royalty Company for $206.58, signed G. W. Peckham, Texhoma runs, first half of April, Wilson Royalty. Indorsed "For deposit only, G. W. Peckham, Trustee Wichita Royalty Company, 509 Security National Bank Building, Wichita Falls, Texas." Paid on May 7, 1924, deposited to the Wichita Royalty Company's account on the same date.

Check dated May 13, 1924, payable to Wichita Royalty Company, for $182.44, signed by G. W. Peckham, Texhoma runs, last half April, Wilson Royalty. Indorsed, "For deposit only, G. W. Peckham, Trustee, Wichita Royalty Company, 509 Security National Bank Building, Wichita Falls, Texas." Paid by City National Bank on May 15, 1924, and deposited to Wichita Royalty Company's account on the same date.

619

Check dated May 26, 1924, payable to Wichita Royalty Company, for $538.30. Signed G. W. Peckham, Panhandle Runs, on R. M. F. last half of April. Indorsed, "For deposit only, G. W. Peckham, as trustee Wichita Royalty Company, 509 Security National Bank Building, Wichita Falls, Texas." Paid on May 27, 1924, and deposited to the account of Wichita Royalty Company on the same day.

Check dated May 28, 1924, payable to the Wichita Royalty Company for $138.75, signed by G. W. Peckham, Texhoma runs, Staniforth lease, first half of May, Indorsed "For deposit only, G. W. Peckham, trustee, Wichita Royalty Company, 509 Security National Bank Building, Wichita Falls, Texas." Paid June 3, 1924, deposited to the account of Wichita Royalty Company on the same date.

Check dated June 12, 1924, payable to Wichita Royalty Company for $74.63, signed by G. W. Peckham, Texhoma Runs last half of May, Wilson Royalty. Indorsed "For deposit only, G. W. Peckham, trustee, Wichita

Royalty Company, 509 Security National Bank Building, Wichita Falls, Texas." Paid June 14, 1924. Deposited to the account of Wichita Royalty Company on the
620 same date.

Check dated July 5, 1924, payable to Wichita Royalty Company for $135.32, signed by G. W. Peckham, and says, "Griswold runs, March and April, R. M. F. lease. Indorsed "For deposit only, G. W. Peckham, Trustee, Wichita Royalty Company, 509 Security National Bank Building, Wichita Falls, Texas." Paid July 9, 1924. Deposited to the account of Wichita Royalty Company on the same date.

Check dated June 28, 1924, payable to Wichita Royalty Company, $55.64, signed by G. W. Peckham. First half of June runs, Texhoma on Staniforth lease indorsed "For deposit only, G. W. Peckham as trustee, Wichita Royalty Company, 509 Security National Bank Building, Wichita Falls, Texas." Paid July 18, 1924. Deposited to Wichita Royalty Company's account on that date.

Next have a check dated July 31, 1924, $35.78, payable to Wichita Royalty Company, signed G. W. Peckham, and says, "Texhoma, first half of July, Wilson Royalties." Indorsed, "For deposit only, G. W. Peckham, trustee, Wichita Royalty Company, 509 Security National Bank Building, Wichita Falls, Texas. Paid August 7, 1924. Deposited to the account of Wichita Royalty Company on the same date.

Check dated July 23, 1924, payable to Wichita Royalty Company, $40.04, signed G. W. Peckham, and says, "Texhoma runs last half of June, Wilson Royalties. Indorsed,
"For deposit only, G. W. Peckham, trustee,
621 Wichita Royalty Company, 509 Security National Bank Building, Wichita Falls, Texas." Paid August 7, 1924. Deposited to the account of Wichita Royalty Company on the same date.

The next I have a check dated September 3, 1924, payable to Wichita Royalty Company for $34.75, signed G. W. Peckham. Texhoma runs, Staniforth lease, last half of July. Indorsed, "For deposit only, G. W. Peckham

as trustee, Wichita Royalty Company, 509 Security National Bank Building, Wichita Falls, Texas." Paid September 9, 1924. Deposited to the account of Wichita Royalty Company on the same day.

Next, I have a check dated September 5, 1924, payable to Wichita Royalty Company for $751.41, signed by G. W. Peckham, and says, "Panhandle runs May and first three days of June, Wilson Royalties." Indorsed, "For deposit only, G. W. Peckham, trustee for Wichita Royalty Company, 509 Security National Bank Building, Wichita Falls, Texas." Paid on September 9, 1924. Deposited to the account of Wichita Royalty Company on the same day.

Check dated September 3, 1924, payable to Wichita Royalty Company for $52.83, signed by G. W. Peckham, Texhoma runs, Staniforth lease, first half of August. Indorsed, "For deposit only, G. W. Peckham, Trustee, Wichita Royalty Company, 509 Security National Bank Building, Wichita Falls, Texas." Paid September 9, 1924, deposited in the account of Wichita Royalty Company on the same date.

622 Check dated October 16, 1924, payable to the Wichita Royalty Company, $54.37, signed G. W. Peckham. Texhoma runs, Wilson Royalty, last half of August, and indorsed, "For deposit only, G. W. Peckham, trustee, Wichita Royalty Company, 509 Security National Bank Building, Wichita Falls, Texas." Paid October 20, 1924, deposited to the account of Wichita Royalty Company on the same date.

Check dated October 16, 1924, payable to the Wichita Royalty Company for $45.00, signed G. W. Peckham, Texhoma runs, Wilson Royalty, September 15,-30, indorsed "For deposit only G. W. Peckham as trustee, Wichita Royalty Company, 509 Security National Bank Building, Wichita Falls, Texas. Paid October 20, 1924, and deposited to the account of Wichita Royalty Company on the same day.

Check dated October 16, 1924, payable to Wichita Royalty Company for $47.36, signed by G. W. Peckham. Tex-

homa runs, Wilson Royalty, September 1 to 15th. Indorsed, "For deposit only, G. W. Peckham as trustee, Wichita Royalty Company, 509 Security National Bank Building, Wichita Falls, Texas." Paid October 20, 1924. Deposited to the account of Wichita Royalty Company on the same date.

Check dated October 28, 1924, payable to Wichita Royalty Company for $39.05, signed by G. W. Peckham, and says "Texhoma runs, October 1st to 15th, Wilson Royalty." Indorsed, "For deposit only, G. W. Peck-
623 ham, trustee, Wichita Royalty Company, 509 Security National Bank Building, Wichita Falls, Texas." Paid November 8, 1924. Deposited to the account of Wichita Royalty Company on the same date.

Check dated November 12, 1924, payable to Wichita Royalty Company, $47.08, signed by G. W. Peckham. It says, "Texhoma runs, Wilson Royalty, October 16,-31." Indorsed, "For deposit only, G. W. Peckham as trustee, Wichita Royalty Company, 509 Security National Bank Building, Wichita Falls, Texas." And it was paid November 16, 1924, and deposited to the Wichita Royalty Company account on the same day.

Check dated November 28, 1924, payable to Wichita Royalty Company $36.03, signed G. W. Peckham. Texhoma runs, November 1 to 15, Wilson Royalty. Indorsed "For deposit only, G. W. Peckham as trustee, Wichita Royalty Company, 509 Security National Bank Building, Wichita Falls, Texas." Paid November 29, 1924, and deposited to the account of Wichita Royalty Company on the same date.

I next have a check dated December 9, 1924, payable to Wichita Royalty Company, $197.82, signed G. W. Peckham. Texhoma store, Wilson Royalty. Indorsed "For deposit only, G. W. Peckham, as trustee, Wichita Royalty Company, 509 Security National Bank Building, Wichita Falls, Texas. Paid December 10, 1924, and deposited to the account of Wichita Royalty Company on the same date.

Next, December 13, 1924, payable to Wilson
624 Royalty Company, $33.23, signed by G. W. Peckham. Texhoma last half of November, Wilson Royalty. Indorsed, "For deposit only, G. W. Peckham as trustee, Wichita Royalty Company, 509 Security National Bank Building, Wichita Falls, Texas." Paid December 16, 1924, and deposited to the account of Wichita Royalty Company on the same day.

Check dated December 30, 1924, payable to Wichita Royalty Company, $34.66, signed G. W. Peckham. Texhoma runs, Wilson Royalty, December 1 to 15. Indorsed, "For deposit only, G. W. Peckham as trustee, Wichita Royalty Company, 509 Security National Bank Building, Wichita Falls, Texas." Paid January 10, 1925, and deposited to the account of Wichita Royalty Company on the same date.

Check dated January 13, 1925, payable to Wichita Royalty Company, $52.27, signed by G. W. Peckham, and says, "Refund from McCory on Wilson Royalty." Indorsed, "For deposit only, G. W. Peckham as trustee, Wichita Royalty Company, 509 Security National Bank Building, Wichita Falls, Texas." Paid January 16, 1925, and deposited to the account of Wichita Royalty Company on the same date.

Check dated January 13, 1925, payable to Wichita Royalty Company, $31.04, signed G. W. Peckham. Texhoma runs, December 16 to 31, Wilson Royalty, and indorsed, "For deposit only, G. W. Peckham trustee, Wichita Royalty Company, 509 Security National Bank Building, Wichita Falls, Texas." Paid January 16.

625 The next is a check dated February 4, 1925, payable to Wichita Royalty Company for $31.25, signed G. W. Peckham. "Refund on commission, Lane Royalty." And indorsed "For deposit only, G. W. Peckham, trustee, Wichita Royalty Company, 509 Security National Bank Building, Wichita Falls, Texas." Paid February 11, 1925, and deposited to the account of Wichita Royalty Company on the same day.

Check dated November 6, 1925, payable to Wichita Royalty Company, for $1,500.00, signed G. W. Peckham, and indorsed "For deposit only, G. W. Peckham as trustee, Wichita Royalty Company, 509 Security National Bank Building, Wichita Falls, Texas." Paid November 10, 1925, and deposited to the account of Wichita Royalty Company on the same day. There is no other notation on the check. I have no information as to the purpose of its being given, except from my investigation, which discloses that it is a refund on a check dated October 8, 1925, for $5,500.00, where it stated that it was to purchase royalties, and it described some of them, listed as properties Nos. 81 and 82, Callahan County Royalty, $2,500.00; 320 acres Archer and Young County, $1,500.00, and the further item, $1,500.00. This check is a refund of that $1,500.00 so advanced on October 8, 1925. The check of $1,500.00 on October 8, is refund to that extent of that company.

Next is a check dated February 18, 1926, payable to Wichita Royalty Company, $1,103.13, signed G. W. Peckham, and says, "Last half Jennie Stephens Roy-
626 alty." Indorsed, "For deposit only, G. W. Peckham, trustee, Wichita Royalty Company, 509 Security National Bank Building, Wichita Falls, Texas." Paid February 24, 1926, and deposited to the account of Wichita Royalty Company on the same day.

The next check dated January 30, 1926, payable to the order of Wichita Royalty Company, $1,235.99, signed G. W. Peckham and says, "Runs first half January, Stephens Royalty." Paid February 10, 1926, and deposited to the account of Wichita Royalty Company on the same day.

A check dated July 28, 1926, payable to the Wichita Royalty Company, $111.67, signed G. W. Peckham, and says, "Rental on Porter Ranch," and indorsed "For deposit only, G. W. Peckham, as trustee, Wichita Royalty Company, 509 Security National Bank Building, Wichita Falls, Texas." Paid July 27, 1926. It was deposited to the account of Wichita Royalty Company on the same day.

The next check dated June 29, 1923, payable to the order of City National Bank, for $1,026.67, signed G. W. Peckham, draft by Wichita Royalty Company on Harrell, payment on Ellis Holmes. That check was in purchase of Cashier's check No. 17021, dated June 29, 1923, payable to Wichita Royalty Company. It is indorsed "For deposit only, G. W. Peckham, as trustee, Wichita Royalty Company, 509 City National Bank Building, Wichita Falls, Texas," and paid by the City National Bank June 29, 1923, deposited to the account of Wichita Royalty
627 Company on the same day.

Next, check dated July 25, 1923, payable to the City National Bank, $3,080.00, signed G. W. Peckham, in payment of cashier's check No. 17884, dated July 25, 1923, for $3,080.00, payable to G. W. Peckham. Indorsed, "G. W. Peckham." Paid on November 7, 1923 and deposited to the account of Wichita Royalty Company. The last check does not go—this is not supposed to be in there. The check that I have just described as having purchased a cashier's check, did not go into the Wichita Royalty Company account.

I have not described this check of July 25, 1923, payable to the City National Bank, $1,033.33, signed G. W. Peckham, and paid on July 25, 1923, it was in payment of a cashier's check, No. 78885, dated July 25, 1923. Payable to G. W. Peckham for that amount, indorsed "G. W. Peckham by E. E. Scannell, for deposit only, G. W. Peckham as trustee, Wichita Royalty Company, 509 Security National Bank Building, Wichita Falls, Texas." Paid on July 26, 1923, and deposited to the account of Wichita Royalty Company on the same day. Other moneys deposited on that day to the account of Wichita Royalty Company, as reflected by the deposit slip, was $3,080.00. I do not know the purpose of that.

Next is a check of August 2, 1923, payable to B. L. Fain for $3,100.00, signed G. W. Peckham. On August 2, 1923, indorsed, "B. L. Fain," and deposited to the account of Wichita Royalty Company on August 3, 1923. I have a deposit on March 18, 1924, totaling $1,617.97, of which it

shows $598.89 was deposited by G. W. Peckham;
628 the other deposits making up that balance of W. H. Peckham, was $181.19, oil runs, $837.89.

That $3,100.00 check which is dated August 2, 1924, was deposited to the account of the Wichita Royalty Company —I am wrong about that. This was deposited to the account of B. L. Fain, and he gave his check for it—that particular check was not deposited to the account of Wichita Royalty Company—that is the $3,100.00 check. Most of these checks had the deposit numbers on them. I am reasonably certain as to the deposit of the items I have testified with reference to, and have given it as my opinion.

Mr. Humphrey:

At this time the City National Bank and J. T. Harrell offer in evidence the respective checks heretofore testified to, together with a memoranda attached thereto, the same being deposit slips and other data attached to the check. (Check being marked "Plaintiff's Exhibit 43" and reading as follows:)

629 PLAINTIFF'S EXHIBIT 43.

This exhibit contains a number of checks payable to Wichita Royalty Company, and signed by G. W. Peckham—except where otherwise stated—covering various amounts. Also three cashier's checks with checks of G. W. Peckham made payable to City National Bank for purchase of Cashier's checks. Also deposit slips showing where these cashier's checks were deposited to account of Wichita Royalty Company. Also ledger sheet showing deposit of $598.89 to account of Wichita Royalty Company —with deposit slip corresponding.

| Date | Amount | Perforated | Check to Cover |
|---|---|---|---|
| 1-16-23 | $855.54 | 1-16-23 | Oil runs on 9 ac Hattie Vaughn. |
| 1-13-23 | 240.84 | 1-16-23 | Oil runs. |

| Date | Amount | Perforated | Check to Cover |
|---|---|---|---|
| 1-13-25 | 31.04 | 1-16-25 | Thirty one & 4/100 Texhoma runs Dec. 16-31 Wilson Royalty. |
| 1-13-25 | 52.27 | 1-16-25 | Fifty two & 27/100 refund from McCrary on Wilson royalty. |
| 12- 9-24 | 197.83 | 12-10-24 | Texhoma storage Wilson roy. |
| 11-28-24 | 36.03 | 12-29-24 | Texhoma runs Nov. 1-15 Wilson roy. |
| 2-16-23 | 449.82 | 2-21-23 | Oil runs on 9 ac Hattie Vaughn collected 2-12-23. |
| 3- 7-23 | 259.92 | 3-16-23 | Oil runs on 9 ac Hattie Vaughan collected 3-3-23. |
| 3- 7-23 | 500.00 | 3-16-23 | On contract with Interstate Royalty Co. on ..... Royalty. |
| 3-17-23 | 500.00 | 3-19-23 | Payment on 20 ac in R ..... Royalty. |
| 2- 4-25 | 31.25 | 2-11-25 | Refund on commission Lane royalty. |

(Here appears receipt as follows: On 7-29-27 WRCO received $115.81 from Knight & Hines as rent.)

| | | | |
|---|---|---|---|
| 2-14-23 | 3,000.00 | 2-15-23 | Payment on royalty sold to Harrell. |
| 2- 6-23 | 566.37 | 2-21-23 | Oil runs on 4 ac Hattie Vaughan collected 1-27-23. |
| 8-15-23 | 199.92 | 8-15-23 | Oil runs on 35 ac R. T. Eagle Pitcher 7-16 to 7-31-23. |
| 1-21-24 | 5,000.00 | 2- 2-24 | ..... |
| 2- 6-24 | 14.15 | 2- 8-24 | Gas on Ellis Holman for Sept. '23. |

| Date | Amount | Perforated | Check to Cover |
|---|---|---|---|
| 4-15-24 | 184.54 | 4-16-24 | Oil runs last ½ March Texhoma on Stainforth lease Archer Co. |
| 5-25-23 | 302.98 | 5-26-23 | Oil runs on Grimshaw for April run by Humble. |
| 5-15-23 | 234.05 | 5-16-23 | Oil runs on Grimshaw March 12 to 31-23. |
| 8-14-23 | 1,309.47 | 8-14-23 | Oil runs 1-9 to 7-15-23 on 1/64 Eagle Pitcher sold by Fain to WRCo. |
| 8-14-23 | 5,736.16 | 8-14-23 | Oil runs 12-7-22 to 7-15-23 on 1/32 Ellis Holmes sold by WHP to WRCo. |
| 7-23-24 | 40.04 | 8- 7-24 | Texhoma runs last half June Wilson Royalty. |
| 7-31-24 | 35.78 | 8- 7-24 | Texhoma 1st half July Wilson Royalty. |
| 4- 9-24 | 141.38 | 4-16-24 | Oil runs — Texhoma on Staniforth lease 1st half of March. |
| 4- 9-24 | 525.07 | 4-16-24 | Oil runs — Panhandle on RMF 1st half March. |
| 9- 5-24 | 751-41 | 9- 9-24 | Panhandle runs May & first 3 days June Wilson Royalty. |
| 9- 3-24 | 34.75 | 9- 9-24 | Texhoma runs Staniforth lease last half July. |
| 6-28-24 | 55.64 | 7-18-24 | 1st half June runs Texhoma on Staniforth lease. |
| 7- 5-25 | 135.42 | 7- 9-24 | Griswold runs March & April RMF lease. |
| 12-30-24 | 24.66 | 1-10-25 | Texhoma runs Wilson Roy Dec. 1-15. |
| 12-13-24 | 33.23 | 12-16-24 | Texhoma last ½ Nov. Wilson Roy. |
| 11-12-24 | 47.08 | 11-13-24 | Texhoma runs Wilson Royalty Oct. 16-31. |

| Date | Amount | Perforated | Check to Cover |
|---|---|---|---|
| 10-28-24 | 39.05 | 11- 8-24 | Texhoma runs Oct. 1-15 Wilson Roy. |
| 6-12-24 | 74.63 | 6-14-24 | Texhoma runs last half May Wilson Royalty. |
| 11- 6-25 | 1,500.00 | 11-10-25 | ..... |
| 5- 2-24 | 480.04 | 5- 7-24 | Panhandle runs 1st half Apr. RMF lease. |
| 4-24-24 | 375.55 | 4-29-24 | Panhandle runs RMF lease last half of March. |
| 4-29-24 | 206.58 | 5- 7-24 | Texhoma runs first ½ April Wilson royalty. |
| 5-12-24 | 182.44 | 5-15-24 | Texhoma runs last ½ April Wilson royalty. |
| 5-28-24 | 138.75 | 6- 3-24 | Texhoma runs Staniforth lease 1st half May. |
| 5-26-24 | 538.30 | 5-27-24 | Panhandle runs on RMF lease last half April. |
| 10-16-24 | 54.37 | 10-20-24 | Texhoma runs Wilson Royalty last ½ August. |
| 9- 3-24 | 52.83 | 9- 9-24 | Texhoma runs Staniforth runs first half Aug. |
| 10-16-24 | 47.36 | 10-20-24 | Texhoma runs Wilsoy Royalty Sept. 1 to 15. |
| 10-16-24 | 45.00 | 10-20-24 | Texhoma runs Wilson Royalty Sept. 15 to 30. |
| 3-17-23 | 500.00 | 3-19-23 | 20 acres in R..... royalty. |
| 3- 7-23 | 500.00 | 3-16-23 | On contract with Interstate Royalty Co. on sale royalty. |
| 1-30-26 | 1,235.99 | 2-10-26 | Runs first half Jan. Stephenson royalty. |
| 7-26-26 | 111.67 | 7-27-26 | Rental on Porter Ranch. |
| 2-18-26 | 1,103.13 | 2-24-26 | Last half Jan. Stephens Royalty. |

(Cashier's Check):

City National Bank of Commerce, Wichita Falls, Texas, Jun. 29, 1923. No. 78021. Pay to the order of Wichita Royalty Co. $1,026.67.

(Signed) W. L. ROBERTSON,
Vice-President.

Paid 6-29.23.

(Mr. Peckham's check):

Wichita Falls, Texas, 6-29-1923. City National Bank of Commerce. Pay to City Nat'l Bank or Bearer $1,026.67. (Draft for Wichita Royalty on Harrell payment on Ellis Holmes). Paid 6-29-23.

(Signed) G. W. PECKHAM.

Deposit slip:

City National Bank.
Deposited by Wichita Royalty.
Wichita Falls, Texas, 6-29-23.

Checks as follows:

| | | |
|---|---|---|
| Peckham, W. H. | 2,566.66 | |
| F. O. Harrell | 1,026.67 | |
| Oil runs | 212.25 | |
| " | 1,450.25 | "8" |
| Total | $5,345.39 | |

| Date | Amount | Perforated | Check to Cover |
|---|---|---|---|
| 8-14-23 | 1,309.47 | 8-14-23 | Oil runs 1-9 to 7-15-23 on 1/64 Eagle Pitcher sold to WHP to WRCo. |
| 8-14-23 | 2,356.74 | 8-14-23 | Oil runs 1-4 to 7-15-23 on 9/320 Eagle Pitcher sold by Fain to WRCo. |

(Cashier's Check):

(Perforated) Paid 8-14-23. City National Bank. No. 79528. Wichita Falls, Texas, Aug. 14, 1923. Pay to the order of Wichita Royalty Company $8,800.30.

(Signed) W. L. ROBERTSON,
Vice-President.

(Peckham's check):

Wichita Falls, Texas, 8-14-23. (Perforated) Paid 8-14-23. City National Bank of Commerce. Pay to City National Bank or Bearer $8,800.30.

(Signed) G. W. PECKHAM.

(Deposit slip):

City National Bank.
Deposited by Wichita Royalty Co.
Wichita Falls, Texas, Aug. 14, 1923.

Checks as follows:

| | | |
|---|---|---|
| | 5,736.16 | |
| | 1,309.47 | |
| | 1,309.47 | |
| | 2,356.74 | |
| C. C. | 8,800.30 | |
| | 19,512.14 | "8" |

634 (Cashier's check):

City National Bank.

No. 78885.

Wichita Falls, Texas, Jul. 25, 1923.

Pay to the order of G. W. Peckham $1033.33.

(Signed) .....?

Paid 7-26-23.

(Peckham's check):

Paid 7-25-23.

Wichita Falls, Texas, 7-25-23.
City National Bank of Commerce.
Pay to City Nat'l Bank or bearer $1,033.33.
(Signed) G. W. PECKHAM.

(Deposit slip):

City National Bank.
Deposited by Wichita Royalty.
Wichita Falls, Texas, 7-24-23.
Checks as follows:

| | | |
|---|---|---|
| Fain | 3,080.00 | |
| Peckham | 1,033.33 | "8" |
| | 4,113.33 | |

(Work sheet):

Items from G. W. Peckham deposited to account of Wichita Royalty Company.

| Date | Amount |
|---|---|
| 3-18-24 | 598.89 |

(Deposit slip):

City National Bank.
Wichita Royalty Company.
Wichita Falls, Texas, March 18, 1924.
Checks as follows:

| | | |
|---|---|---|
| G. W. P. | 598.89 | |
| W. H. P. | 181.19 | |
| Oil runs | 837.89 | |
| | 1,617.97 | "8" |

635 Mr. Rogers:

To each and every one of such checks, and all of them collectively, and particularly with respect to such checks as show upon their face to be a refund of oil runs made by Peckham to his trust, the Wichita Royalty Company, and its trustee, we object for the reason that the repayment by G. W. Peckham of the proceeds of oil runs to his personal account, and thereafter repaid by him to the trust, could not, to any extent, enter into or change the balance in an accounting between the parties. It affirmatively appearing from the face of most of the checks that the payments were made, as to a refund of proceeds of oil theretofore received by G. W. Peckham, and with respect to other checks, no information is given to show that the items would be properly charged against the Wichita Royalty Company account in an accounting between the parties.

(Which objection was by the Court overruled, to which the defendant then and there excepted.)

The Witness:

There are some checks in Exhibit 43, one of them being for $3,000.00 on February 14, 1923, and the other June 29, 1923, for $1,026.67, which refer to Harrell, that was not J. T. Harrell, the defendant in this case.

Check dated May 5, 1925, payable to Ray and Massie, $2,500.00, signed G. W. Peckham, one-half interest deal with Allen Moran, Routan land, and indorsed "Deposited to the credit of Ray and Massie, and cleared by the Security National Bank May 6, 1925," paid by the City

636 National Bank on the same day--it went to their benefit, that was deposited to the account of Ray and Massie.

Check dated June 25, 1925, drawn on the Security National Bank, payable to Murchison and Fain Oil Company for $9,493.75, signed by G. W. Peckham for 1/16th of the interest in 217 acres in blocks 19, 21 and 22, South Anderson Ranch; indorsed "Deposit only, Murchison and

Fain Oil Company by B. C. Ackerman." Cleared by the City National Bank on June 26, 1925, and paid by the Security National Bank. That was not deposited to the account of Wichita Royalty Company.

I have here a check dated June 29, 1925, payable to the City National Bank of Olney, $1,997.00 drawn on the City National Bank of Wichita Falls, signed G. W. Peckham and indorsed by the City National Bank of Olney, June 30, 1925, cleared through the First National Bank, Wichita Falls, Texas, on July 2, 1925, paid by the City National Bank July 2, 1925; that was on one-eighth royalty west one-half of southwest quarter of northwest quarter of Section 2, J. Pointevant survey, Young County, Texas. It was acquired from G. W. Vernon and wife, June 22, 1925, recorded in Volume 111, page 253, deed records of Young County, Texas; it is for an undivided one-fourth interest in twenty acres. The deed was to G. W. Peckham. I would have to get the payments Mr. Peckham made from the escrow agreement at Olney.

With reference to the check for $9,492.75, I have information that that property is No. 80 of the Wichita
637 Royalty Company, and conveyed by a deed from G. W. Peckham to Wichita Royalty Company, dated the 20th day of July, 1925, covering the north forty acres of block 21, Anderson subdivision of his south pasture as per plat of record in the records of Archer County, Texas; that is conveying 1/16th interest of all oil and gas and other minerals; and also have a deed dated the first of July, 1925, signed by G. W. Peckham conveying the south 32 acres of block 21, of the South Anderson ranch, as shown by map or plat of record in the office of the county clerk of said county; the south sixty acres of the west eighty acres of block No. 22, Anderson South Pasture subdivision; north twenty-five acres of the east fifty acres of the west one hundred acres, block 69, South Anderson pasture; the east sixty acres of the west 160 acres of block No. 19, Anderson South Pasture subidivision. A total of 217 acres and that is the same property as described in Wichita Royalty Company voucher No.

385. Mr. Peckham gave his check to Murchison and Fain on June 25, for his interest in that property, 1925, and the Royalty Company check was issued on June 24, 1925, and paid June 25, 1925, and their voucher, according to their records covering the same property as described in the notation on the corner of Mr. Peckham's check to Murchison and Fain Oil Company. The Wichita Royalty Company check is for $6,000.00, and the Murchison and Fain check is for $9,493.75. I will ascertain later from the deed when Mr. Peckham got title to this property and what is paid for it, and when he got the deed.

638 As to the information I have about the $2,500.00 Ray and Massie Check; that property is No. 79 of the Wichita Royal Company and it is a conveyance dated June 30, 1925, by J. H. Massie, and George T. Ray, to the Wichita Royalty Company and it covers an undivided 1/16th interest in and to all oil and gas and other minerals in and under and that may be produced from the following described land situated in Archer County, Texas, to-wit, 117 acres of land out of the Isaac Holman League and Labor of land, patented to the heirs of Isaac Holman by virtue of certificate No. 672, being known and described as block No. 9 of the Crawford pasture subdivision of said Holman survey. It is acknowledged June 30, 1925, filed for record in Archer County, Texas, November 5, 1925, and volume 108, page 173; so it is my opinion that that $2,500.00 check was in payment of that mineral interest.

On October 17, 1925, check payable to the First National Bank $2,252.25, signed by G. W. Peckham. Cleared by the First National Bank on October 19, 1925. Paid by the City National Bank on the same day. That is for a draft drawn by A. J. Mathis, from Cross Plains, Texas, with the royalty deed attached. The deed is dated October 14, 1925. Signed A. J. Mathis, and L. Mathis. Has $2.50 of revenue stamps on it, covers undivided 1/4th interest in and to all of the oil and gas and other minerals in and under and that may be produced from the fol-

639 lowing described lands; situated in Callahan, Texas, being the east thirty acres off of a sev-

enty-one acre tract of land out of the A. D. Millican Survey in Callahan County, Texas. This deed was to the Wichita Royalty Company, a trust estate, of Wichita County, Texas, known as No. 81. A draft came in on George Peckham with a mineral conveyance attached, to the First National Bank of this city; the draft was in the amount of $2,250.00, First National Bank charged $2.25 exchange. The deed was to the Wichita Royalty Company. The name, "Wichita Royalty Company" in that mineral conveyance is written in a different typewriter from the balance of the typewriting on the instrument. I do not think this shows that the name of the original grantee had been erased and that the Wichita Royalty Company was inserted—it looks to me like it had been left blank. I cannot see any erasure on it myself. The draft came into the First National Bank, drawn on G. W. Peckham. That was filed for record on October 23, 1925, at 9:00 o'clock A. M.

Mr. Rogers:

We offer the deed in evidence and ask that it be photostated.

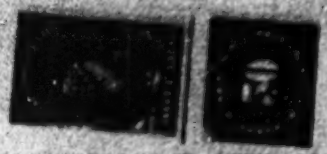
(Marked "Defendant's Exhibit No. 18," and reading as follows:)

THE STATE OF TEXAS, } Know All Men by These Presents:
County of Callahan }

That we, E. J. Mathis and wife, L. Mathis

of Callahan County, Texas, for and in consideration of the sum of twenty-two hundred and fifty Dollars ($2250.00) cash in hand paid by Wichita Royalty Company, a trust estate of Wichita County, Texas, hereinafter called Grantee, the receipt of which is hereby acknowledged, have granted, sold, conveyed, assigned and delivered, and by these presents do grant, sell, convey, assign and deliver unto the said Grantee, and undivided an undivided 1/4 interest in and to all of the oil, gas and other minerals in and under, and that may be produced from the following described land situated in Callahan County, Texas, to-wit:

Being the S. 30 acres off of a 71 acre tract of land out of the W. Gilliam Survey in Callahan County, Texas, conveyed to E. J. Mathis by E. E. Clements and wife, E. J. Clements, on the 4th day of Dec. 1947, by deed of that date, recorded in Vol. 4?, page 116, Deed Records of Callahan County, Texas, and being more particularly described as follows, to-wit: Beginning at the S. E. corner of said 71 acre tract; thence W. to the S. W. corner of the last said Addition to the town of Cross Plains, Texas; thence N. with W. line of said last said Addition to the Cross Plains and Rising Star public road; thence E. with the N. line of said Cross Plains and Rising Star public road to the E. E. corner of 71 acre tract of land; thence S. to the place of beginning and containing 30 acres of land and being the East 30 acres off of said tract of 71 acres and being W. of the Lawlis 2nd. Addition to the town of Cross Plains, Texas.



Together with the right of ingress and egress at all times for the purpose of mining, drilling and exploring said lands for oil, gas and other minerals, and removing the same therefrom.

Said land being now under an oil and gas lease executed in favor of E. I. Albritton and et ux it is understood and agreed that this sale is made subject to the terms of said lease, but covers and includes one-fourth of all of the oil royalty, and gas rental or royalty due and to be paid under the terms of said lease.

It is understood and agreed that one-fourth of the money rentals which may be paid to extend the term within which a well may be begun under the terms of said lease is to be paid to the said Grantee and in event that the above described lease for any reason becomes cancelled or forfeited, then and in that event an undivided one-fourth of the lease interests and all future rentals on said land for oil, gas and other mineral privileges shall be owned by the said Grantee owning 3/4 and 1/4 of all oil, gas and other minerals in and under said lands, together with 3/4 and 1/4 interest in all future rents.

To have and to hold the above described property, together with all and singular the rights and appurtenances thereto in any wise belonging unto the said Grantee herein, his heirs and assigns forever: and we do hereby bind ourselves, our heirs, executors and administrators to warrant and forever defend all and singular the said property unto the said Grantee herein, his heirs and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof.

Witness our hands this the 1st day of October 19 47.

Witnesses:

E. J. Mathis
L. Mathis

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STATE OF TEXAS,

County of Callahan

Before me, Virgil Hart

Notary Public in and for Callahan County, Texas, on this day personally appeared

A. J. Mathes and L. Mathes his wife

known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same for the purposes and consideration therein expressed, and the said L. Mathes wife of the said A. J. Mathes having been examined by me privily and apart from her husband, and having the said instrument by me fully explained to her, she acknowledged the same to be her act and deed and declared that she had willingly signed the same for the purposes and consideration therein expressed, and that she did not wish to retract it.

GIVEN UNDER MY HAND AND SEAL OF OFFICE This 14th day of Oct A.D. 1925.

(Seal) Virgil Hart

Notary Public within and for Callahan County, Texas

STATE OF TEXAS }
COUNTY OF CALLAHAN }

I, S. E. SETTLE, Clerk of the County Court of said County, do hereby certify that the foregoing instrument of writing, dated the 14 day of Oct A.D. 1925, with its certificate of Authentication, was filed for record in my office the 20 day of Oct A.D. 1925, at 9 o'clock A. M., and duly recorded this 24 day of Oct A.D. 1925, at 9 o'clock A. M., in the Deed Records of said County, in Volume 162 Page 569

Witness my hand and the seal of the County Court of said County, at office of Baird this the 24 day of Oct A.D. 1925.

(Seal) S. E. Settle
Clerk County Court, Callahan County, Texas

By [illegible] Deputy

RELEASED
ROYALTY DEED
INDEXED
COMPARED

TO 10-14-25

FILED FOR RECORD
This 23rd day
of Oct A.D. 1925
at 9 o'clock A. M.
S. E. Settle
County Clerk, Callahan County, Texas
By [illegible] Deputy

RECORDED
In Book M Page 569
Recording Fee $1.40

THIS INSTRUMENT SHOULD BE FILED WITH THE COUNTY CLERK IMMEDIATELY FOR RECORD.

The Denny Clements Stationery Co., Dallas, Tex.—5-16-25

Michie Hyde 2x10.

CORPORATION ACKNOWLEDGMENT.

The State of Texas, County of

BEFORE ME

a Notary Public in and for the County of, in the State of Texas, on this day personally appeared

of the Corporation of known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, and in the capacity therein set forth.

GIVEN UNDER MY HAND AND SEAL OF OFFICE This day of A.D. 19

(Seal)

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642 The Witness:

At the place where the $2,250.00 is written, I think there has been something erased there. The $2,250.00 written out in figures is the same typewriter, and the same writing that a description of the deed is made of. $2,250.00 in numbers here, I don't know about that—it looks like the same typewriter—it is not the same typewriter that was used to write the name, "Wichita Royalty Company" in there. There is no erasure under the $2,250.00 spelled out "twenty." The line containing the words "Wichita Royalty Company" and "a trust estate of Wichita County, Texas," shows to be written upon a typewriter different from the typewriter that was used in the writing of the rest of the instrument. There is $2.50 revenue stamps on that transaction. He paid that to the City National Bank, he paid that from the bank October 20, 1925. Also C. A. Rogers, $225.00 for commission on the deal, paid E. C. DeMontel $25.00 attorney fee examination of the abstract. I don't know whether it was addressed to the Wichita Royalty Company or to G. W. Peckham. November 12, 1925, he paid B. L. Fain $1,500.00 on a sale of Kunkle Royalty. On property No. 82, instrument dated October 9, 1925, signed B. L. Fain and acknowledged on the same date, and recorded in Young County, Texas, November 12, 1925, volume 116, page 130, revenue stamps $1.50. Conveyed title to Wichita Royalty Company, and it was an undivided 1/64th interest in and to all of the oil and gas and other mineral in and under or that may be produced from the following described land situated in Young and

643 Archer County, to-wit, "All of the E. Pankonin, No. 1,700, and all of the L. Pankonin Survey, No. 1,701, otherwise known and described as the east half of Section 4, B. D. V. & C. R. R. Co. Survey, No. 692, containing 320 acres more or less. The same property set forth by their voucher notation No. 427, of Wichita Royalty Company, dated October 8, 1925.

Also have check here dated December 21, 1925, payable to Knight & Hines, $50.00, balance cash payment on

one thousand acres, Archer County, Texas, drawn by G. W. Peckham, paid by the City National Bank on January 21, 1926. This is the Porter Ranch.

Check dated December 8, 1925, payable to Knight & Hines for $1,200.00, signed by G. W. Peckham, 1/8 one thousand acres Archer County acreage, Porter land; indorsed "Knight & Hines, W. T. Knight. by A. H. Heron, on December 21, 1925." These checks were deposited to the account of Knight & Hines.

January 8, 1926, Curlee land, $2,567.75, signed G. W. Peckham, paid on January 11, 1926. The proceeds of that check were deposited to W. S. Curlee.

January 15, 1926, J. T. Harrell, C. E. Basham, $2,201.22, signed G. W. Peckham, Vernon Royalty; indorsed J. T. Harrell and C. E. Basham, one-half deposited to the account of each of those gentlemen.

January 25, 1926, J. T. Harrell and C. E. Basham, $10,028.00, signed G. W. Peckham, dated January 25, 1926, indorsed J. T. Harrell and C. E. Basham, one-half of it deposited to the account of each of those men.

644 March 6, 1926, payable to J. T. Harrell and C. E. Basham, $5,060.00, signed G. W. Peckham, paid March 6, 1926, indorsed by J. T. Harrell and C. E. Basham, one-half of it deposited to Mr. Harrell and one-half to Mr. Basham.

March 31, 1926, payable to J. T. Harrell, $5,087.00, signed G. W. Peckham, indorsed J. T. Harrell and C. E. Basham; and one-half of it deposited to the account of each. That is the Stephens Royalty deal No. 2. All of those checks are Harrell and Basham on the Stephens Royalty.

Check dated September 23, 1925, payable to the Highland Irrigation Company, $3,869.25, signed G. W. Peckham, indorsed "Pay to the order of City National Bank, Wichita Falls, Texas, Highland Irrigation Company, No. 142." Paid September 24, 1925. The last check was deposited to the Highland Irrigation Company. My understanding is that when you asked me to testify to all moneys spent by Mr. Peckham for the benefit of Wichita

Royalty Company, that was my understanding, to the benefit or account of Wichita Royalty Company.

Mr. Rogers:

I am inquiring—and do not desire to be bound by any inquiry as to any payment made by G. W. Peckham upon his own account, for his personal purchase, either of Marlborough Addition or for Texas Investment Company, or for properties which he acquired as an individual and those others from which he undertook to sell to the trust estate, and to the extent that the record reflects
645 that any evidence has been suggested, or concerning which, I move to strike it and object to its introduction for the reason that the Royalty Company or its trustee can be bound by none of such transactions, that they relate to and are evidence of dual dealings between the trustee as an individual and himself as trustee, and for that reason, and due to the misunderstanding between counsel and the witness, the trust now moves to strike the evidence.

(Which objection was by the Court overruled, to which the defendant excepted.)

Mr. Morrow:

If the record should be regarded as withdrawing the questions, we want the evidence in as coming from us.

Mr. Boone:

That is correct. We want it to remain in the evidence, and we adopt the questions and answers, and offer them in evidence ourselves.

Mr. Humphrey:

We offer the same testimony that you seek now to withdraw.

Mr. Rogers:

And to its introduction I make the same objection last above recited.

(Same ruling.)

The Witness:

There were no other items than those I have testified about heretofore, that were deposited to the account of Wichita Royalty Company, that I know of.

You asked me this morning if the Texas Investment Company issued its check for $75,000.00, dated
646 on or before February 10, 1930; I have here check dated February 10, 1930, drawn on the City National Bank payable to Gray, Harrell & Scannell, $75,000.00. Says, "Marlborough Assets $65,000.00, R. E. D." I imagine he means, "To reduce capital stock $10,000.00, $75,000.00." Signed Texas Investment Company of Wichita Falls, special by A. B. Duncan, and on the reverse side says, "Credit Notes." This check was paid by the City National Bank on February 10, 1930. I don't know what note the bank credited the $75,000.00 item on; I have the note somewhere here in my papers, and I did not find it awhile ago, that was in payment of, I have the ledger sheet, but I can find both. I don't remember when the note was originally executed. I have the note here now, dated August 29, 1929, on the bank, $75,000.00 with interest from date, signed Gray, Harrell and Peckham. That is-J. T. Harrell, paid January 10, 1930. The check itself was dated February 10, it is perforated paid February 10, 1930. I have the investment company liability record here showing all the additional amounts they owed during that period—I want to make a correction—I said the note was paid January 10, but it is February 10. The liability of the Texas Investment Company, to the plaintiff bank on August 29, 1929, was $44,370.00, that principal balance continued during August, was first reduced on December 31, to $43,940.33. On January 29, 1930, they owed $44,370.00 and on May 6, 1930, they owed $44,080.00. The liability that I am now talking about as reflected by this liability ledger, is the liability
647 record of the then liability of Texas Investment Company, a corporation, to the plaintiff bank, in

addition to the $75,000.00 note that I show to have been paid. That was not a note of the Texas Investment Company, it was by three individuals, one of whom was Mr. Harrell. The Texas investment Company note, the liability record which I have identified and testified from J. T. Harrell, G. W. Peckham were indorsers, and J. A. Kemp. Those indorsements continued through the period asked about, August, 1929, until February, 1930. I have Mr. Harrell's personal liability record here for the year 1929. Mr. Harrell's personal liability to the bank as reflected by their liability account, beginning with the first of August, 1929, was $22,049.32. September 16, it was $22,051.21; September 21, it was $19,995.22; November 1, it was $30,064.11; November 29, it was $26,054.11; December 13, it was $20,015.22; December 27, it was $21,016.55; January, $20,015.22; that is January 2, 1930. February 1, 1930, $19,946.66. During that time I could not tell you whether Mr. Harrell was secondarily liable to the bank upon any other indebtedness than the Texas Investment Company or not, because I have not gone through the records to see at that time. I do not know of any other.

I can have by tomorrow a copy of the third quarterly report made by the comptroller of currency in 1929.

As to the manner in which checks pass through the bank and are returned to the customer, I will explain the mechanics of it; there is a bookkeeper assigned
648 to a certain ledger, offset to his, a bookkeeper assigned to the next ledger, so, for instance, one bookkeeper has the A's through the E's, the next bookkeeper will pick up at the E's and go through the H's, these both post together. One boy posts his ledger, and then he will post the other man's statement, and there will be two separate books there balanced against each other. Each man has his own machine, and the bookkeeper No. 1, will post bookkeeper No. 2's statement, and bookkeeper No. 2 will post bookkeeper No. 1's statement, and they will use their own machines—of course, all of the machines are alike—but one man uses one machine constantly. In other words, all ledgers are posted first,

then they will turn around and start on the statement and post all of the statements. The transactions are completed each day, bringing the two forward.

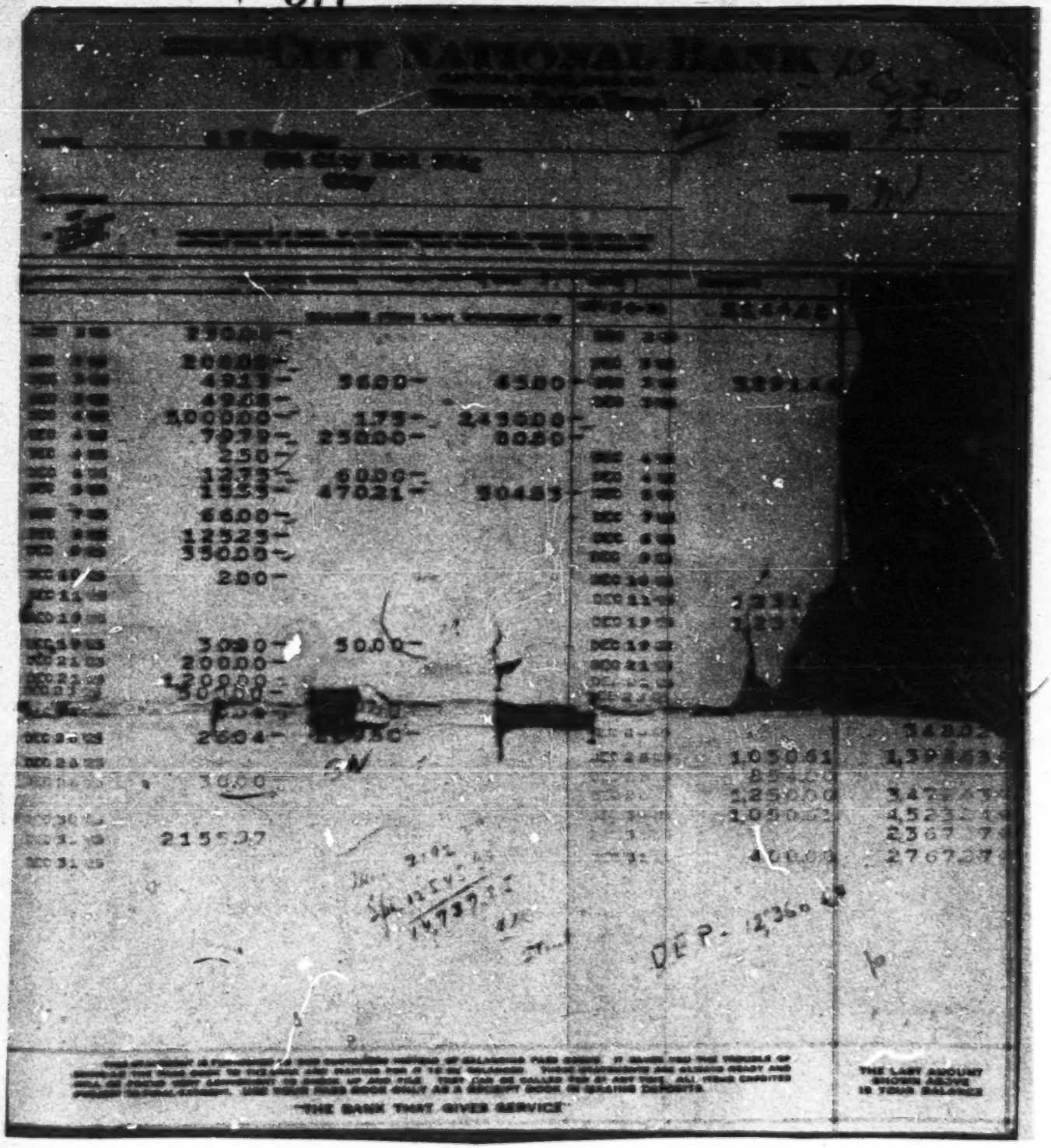
Mr. Rogers:

We offer these statements in evidence, and ask that they be photostated.

(Marked "Defendant's Exhibits 19 and 20," as follows:)

# City National Bank

THE LAST AMOUNT SHOWN ABOVE IS YOUR BALANCE



CITY NATIONAL BANK

"THE BANK THAT GIVES SERVICE"

651 These pencil notations were not on the statements at the time they were made, the only notations at that time was the number of the check, and who verified the statement, his initials. The dark figures at the bottom is a new ribbon put on the machine.

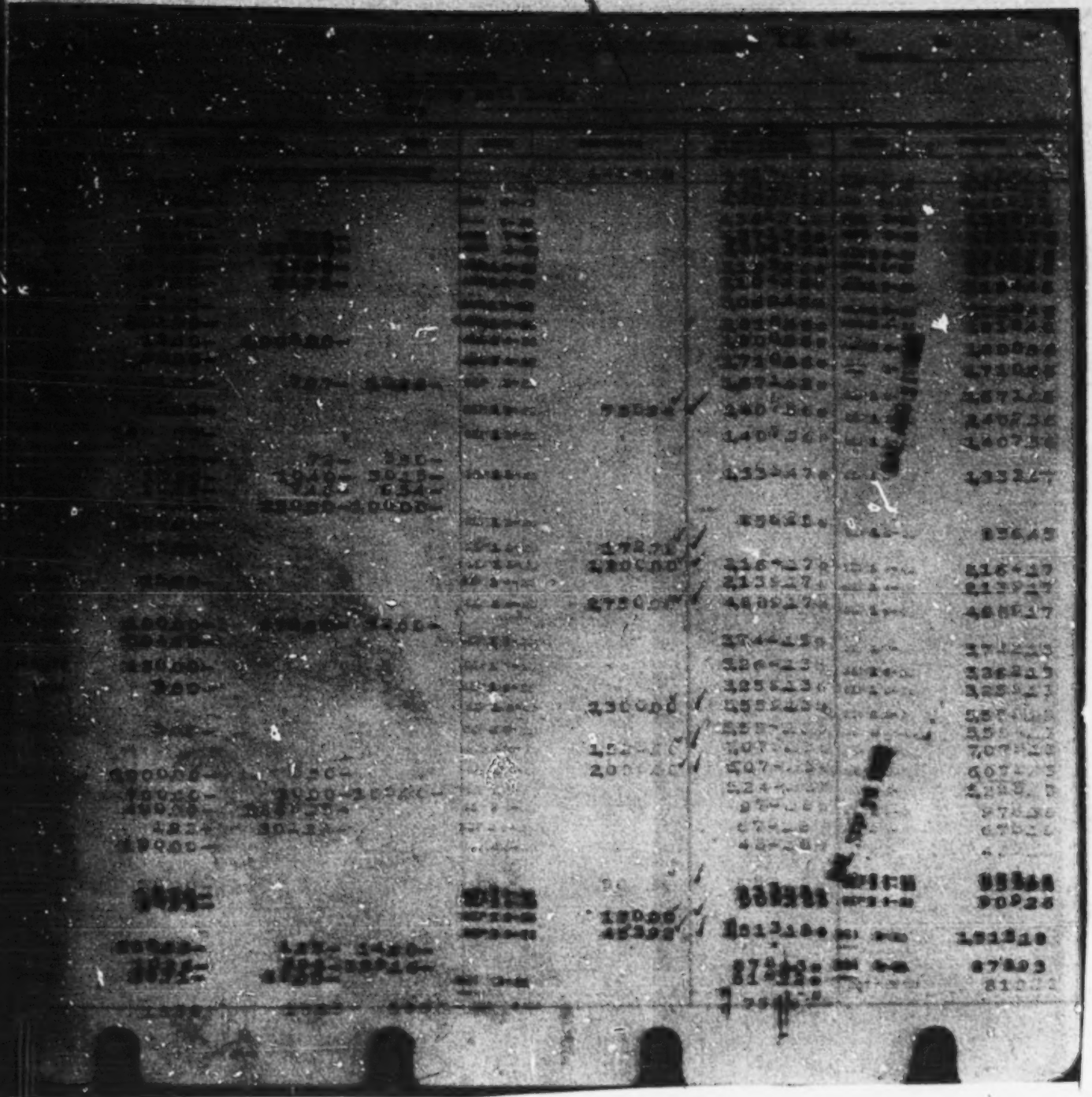
I have a list of the borrowings in the bank.

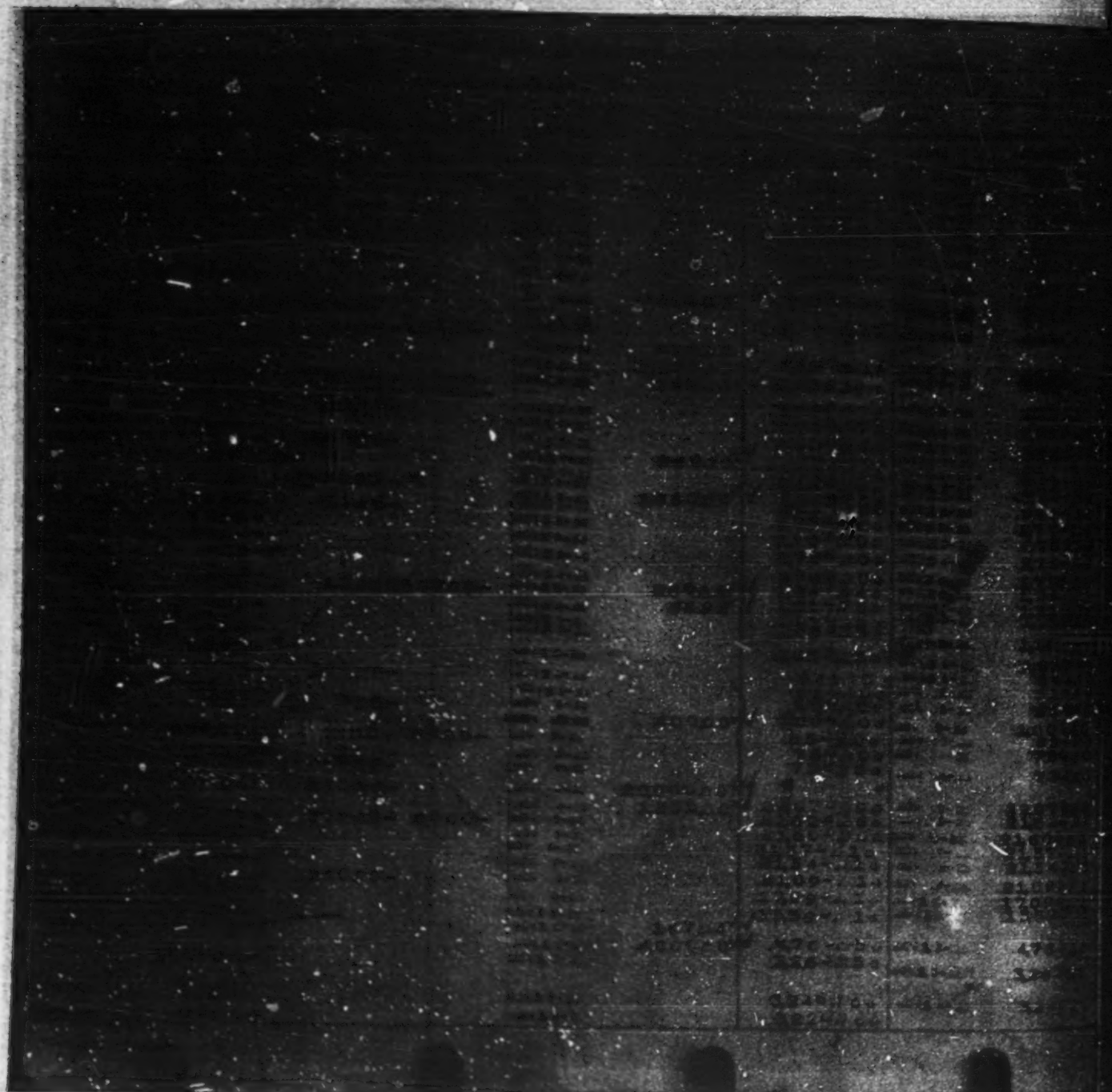
Defendant's Exhibits 19 and 20 were loaned to us by the administrator of the estate of G. W. Peckham, one sheet is torn, and it has become that way since we got it by handling. Our ledger reflects the same thing as the statement in respect to the checks and balances and deposits for those months.

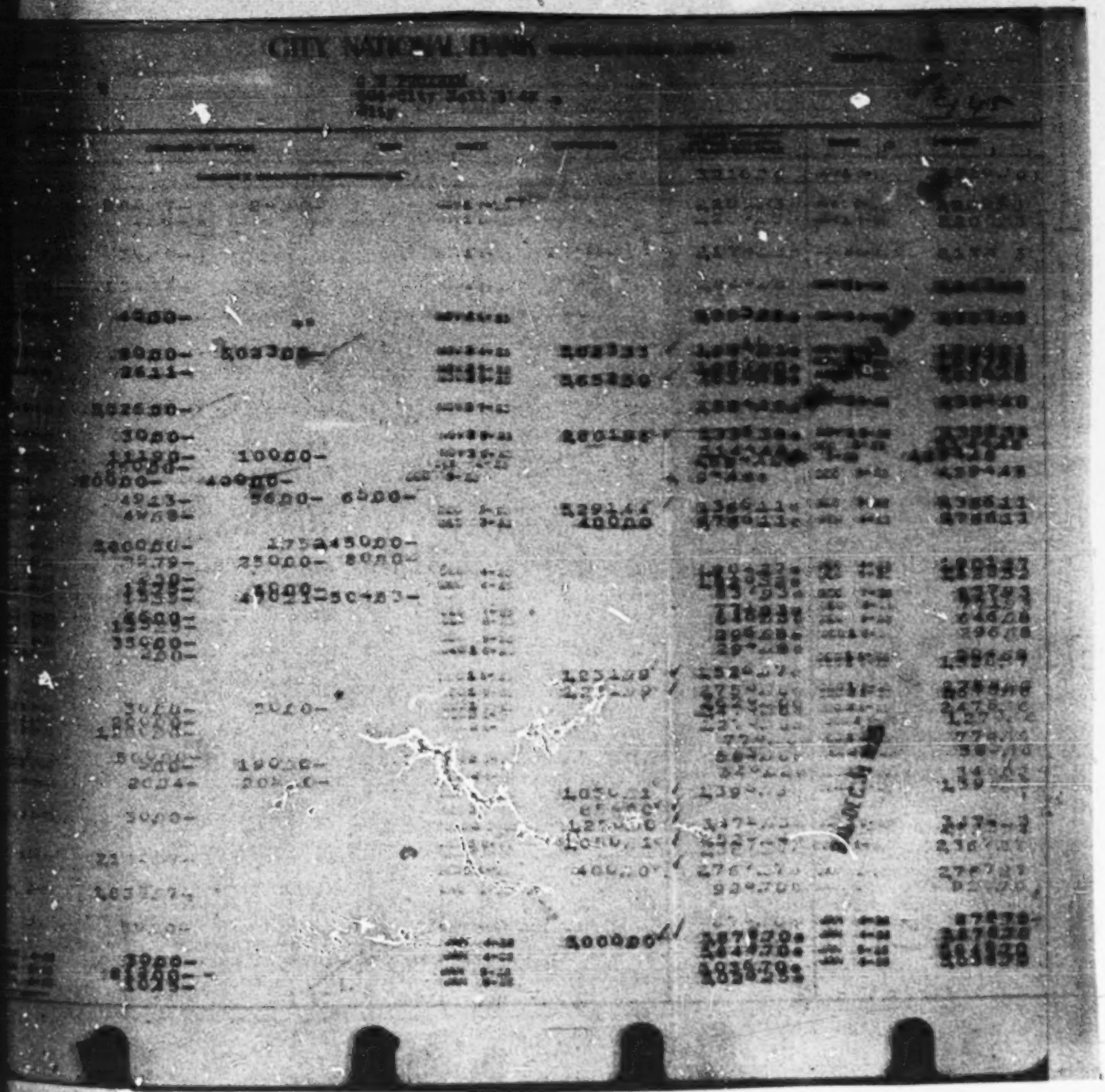
Mr. Humphrey:

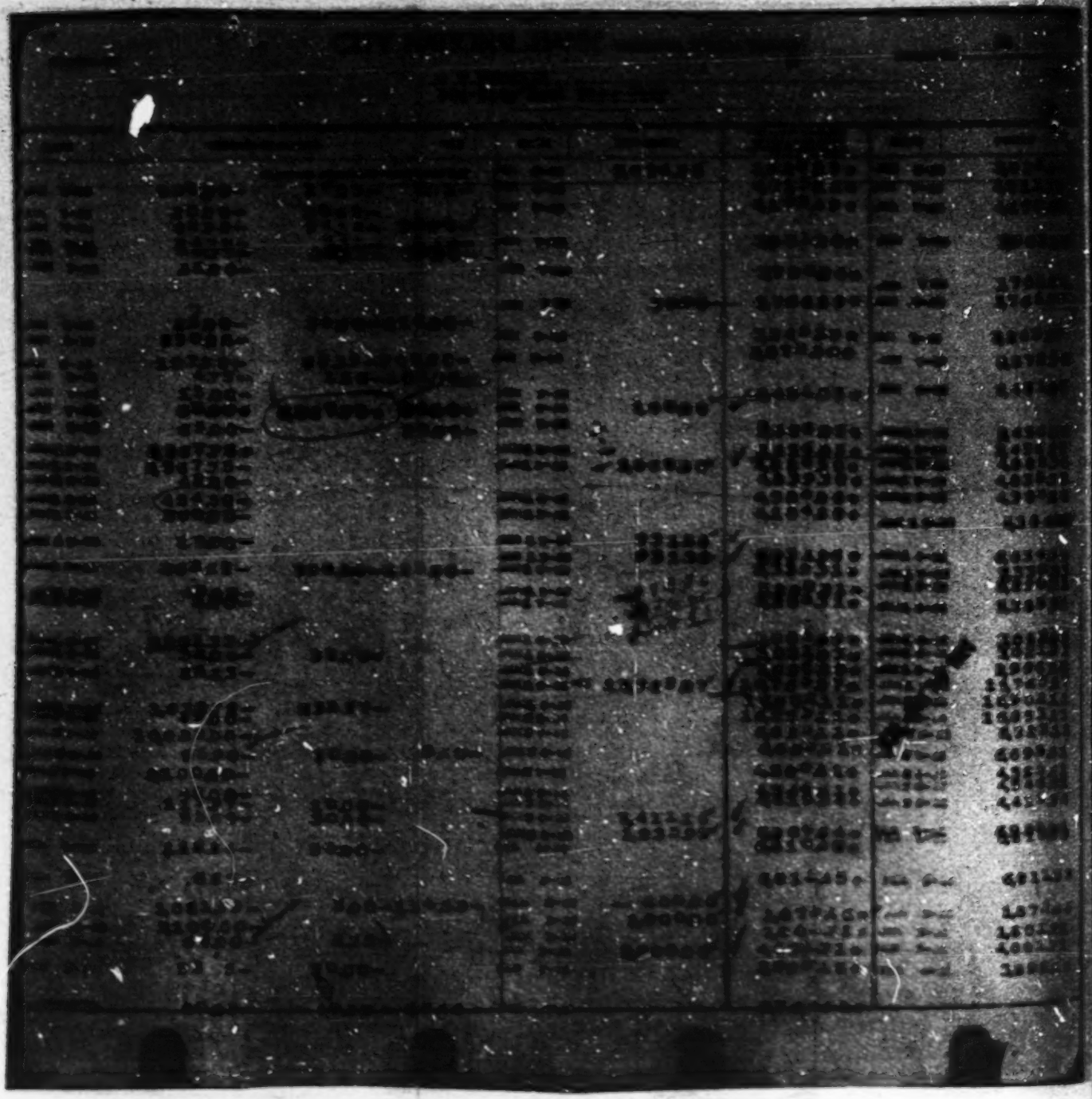
In order to show correctly what those figures were that is given, we offer in evidence in connection with those two statements, the bank ledger sheets for those two months, and ask that they be photostated.

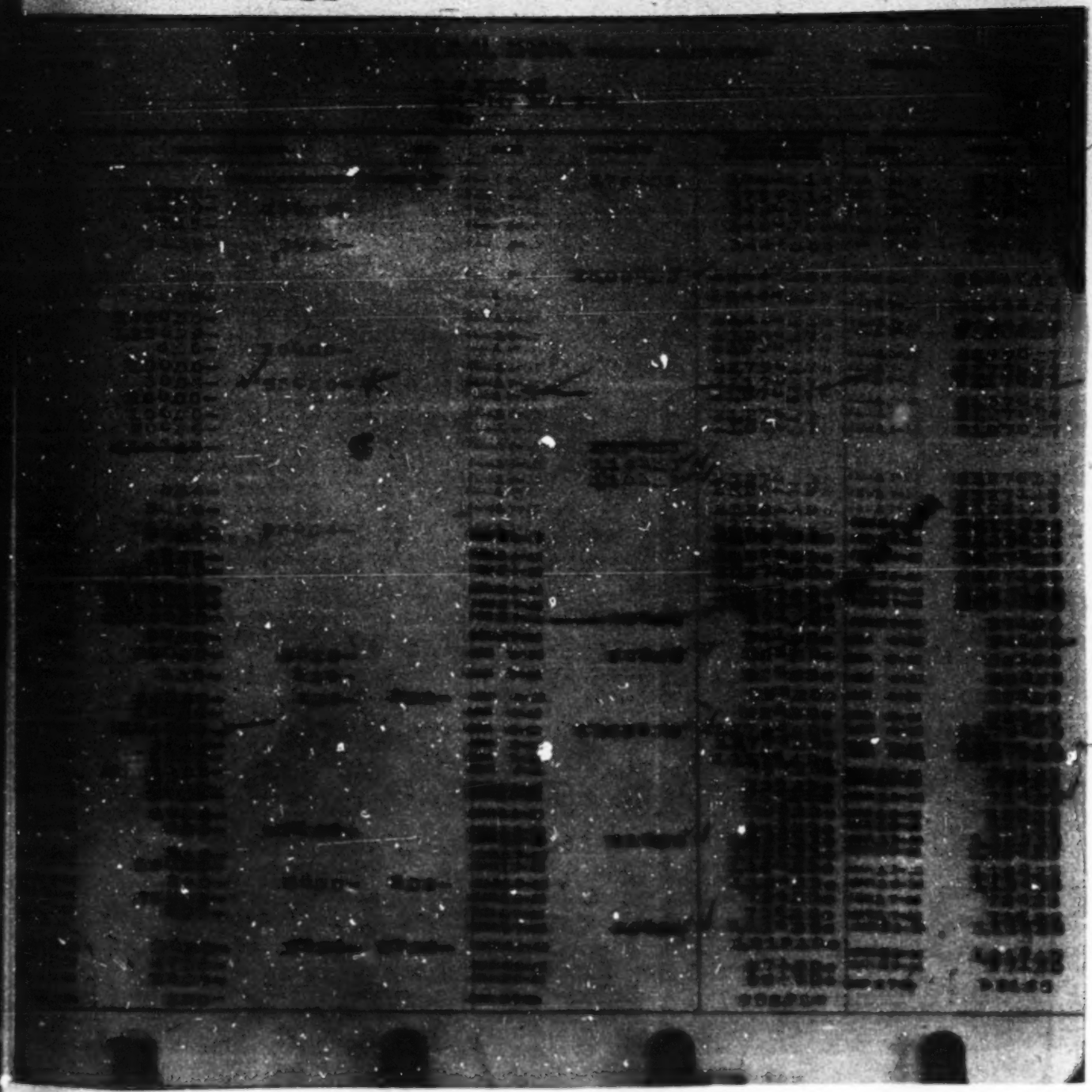
(Marked "Plaintiff's Exhibits 44 and 45," and reading as follows:)

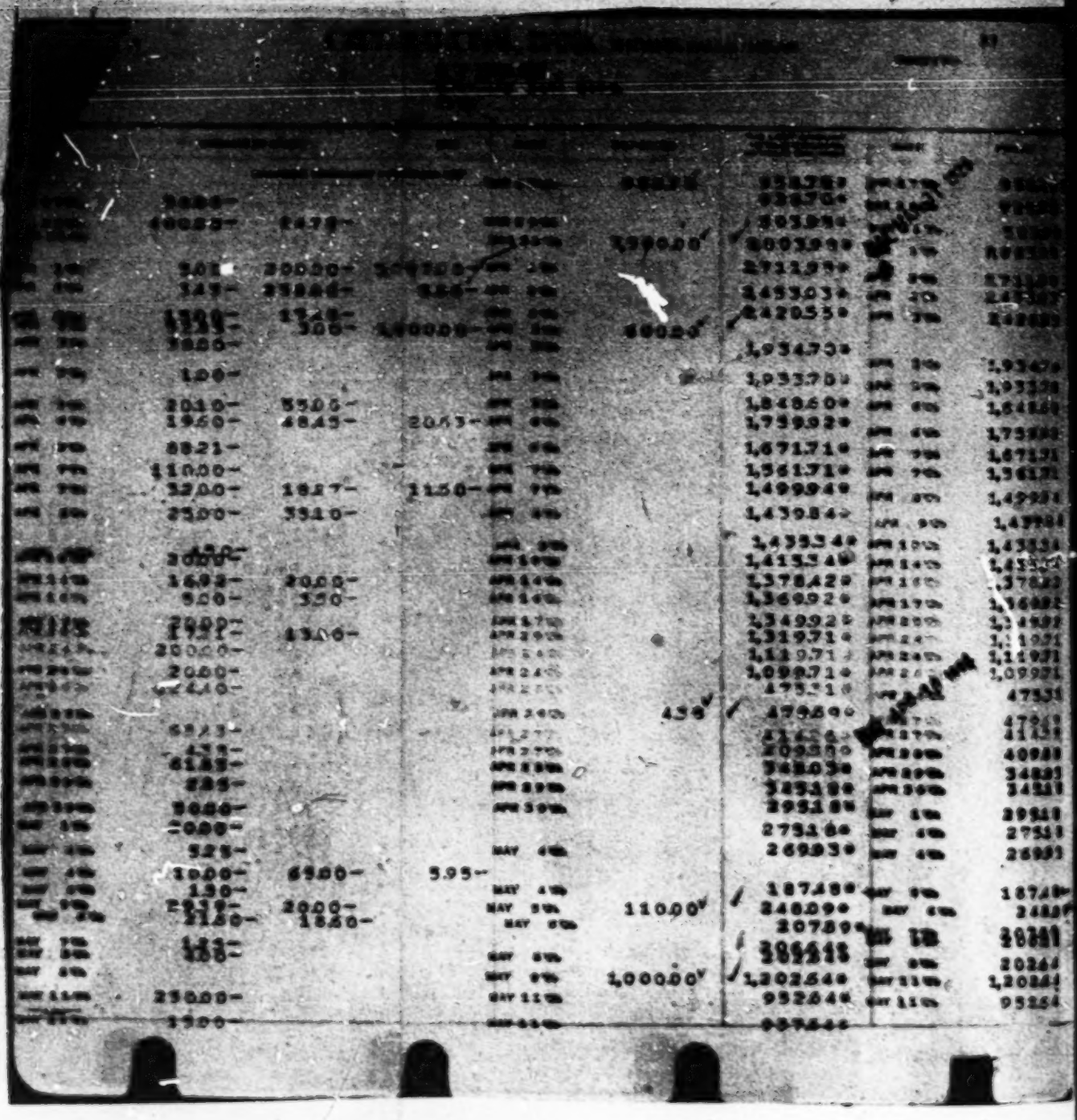


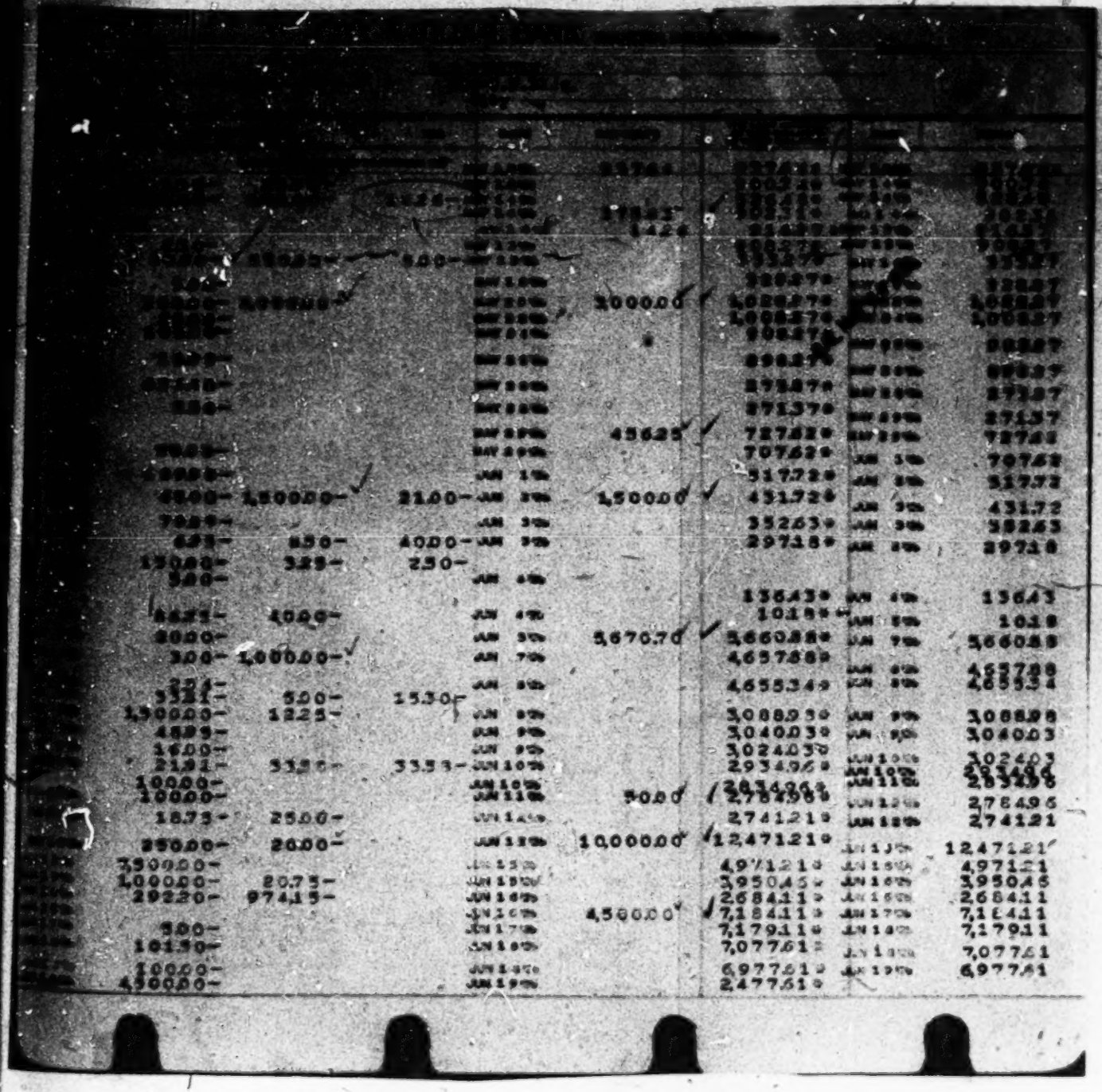


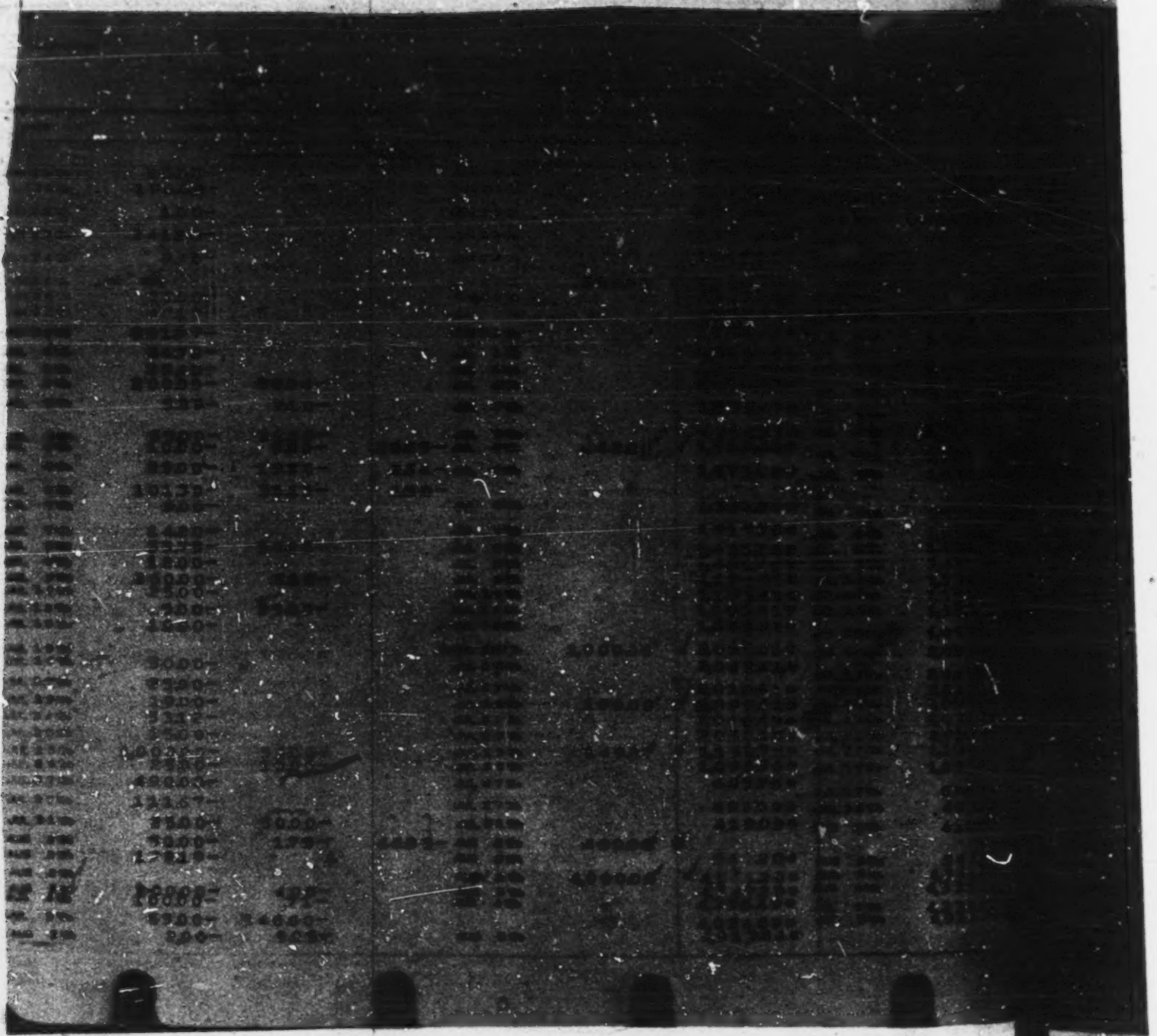


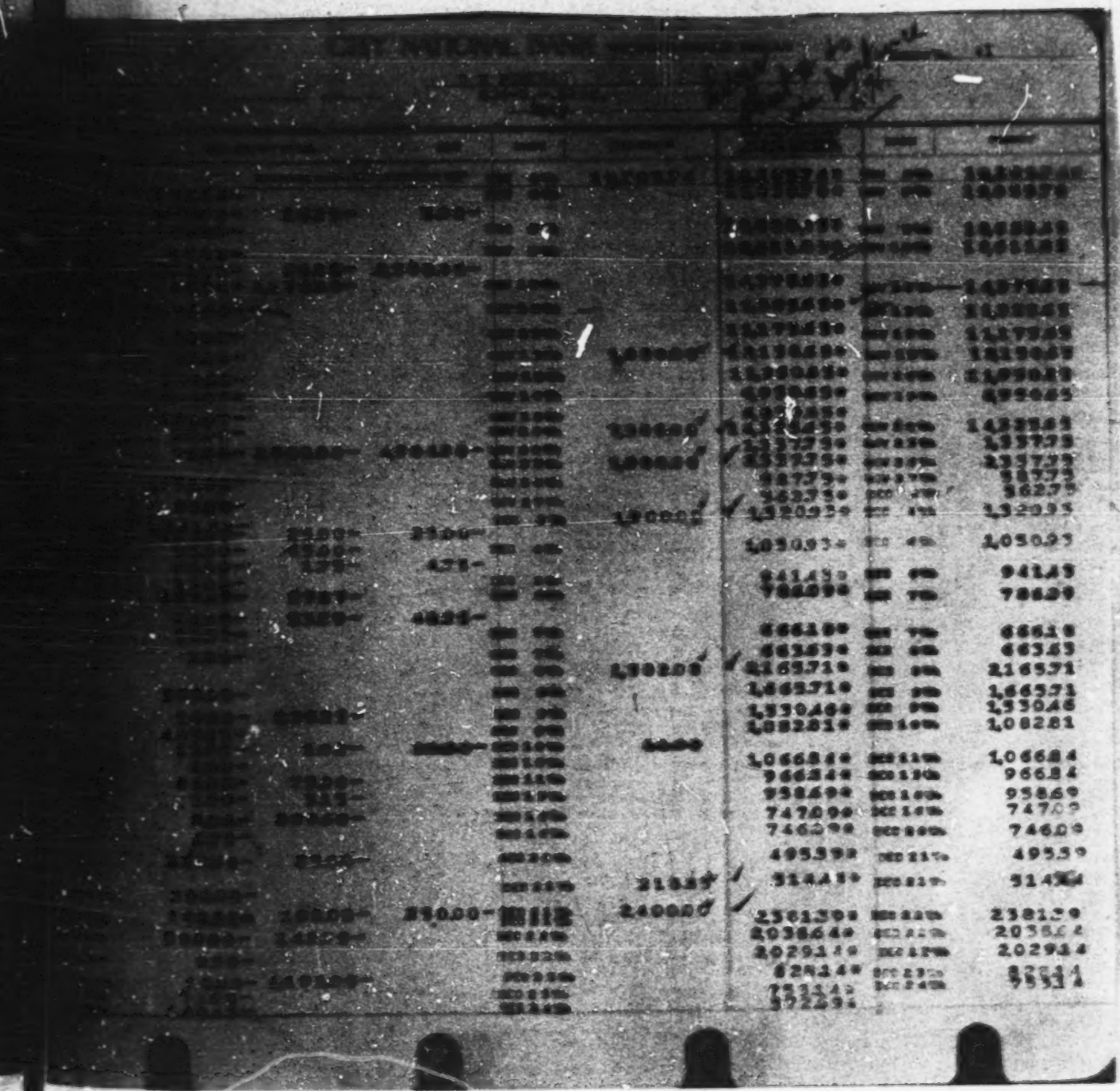


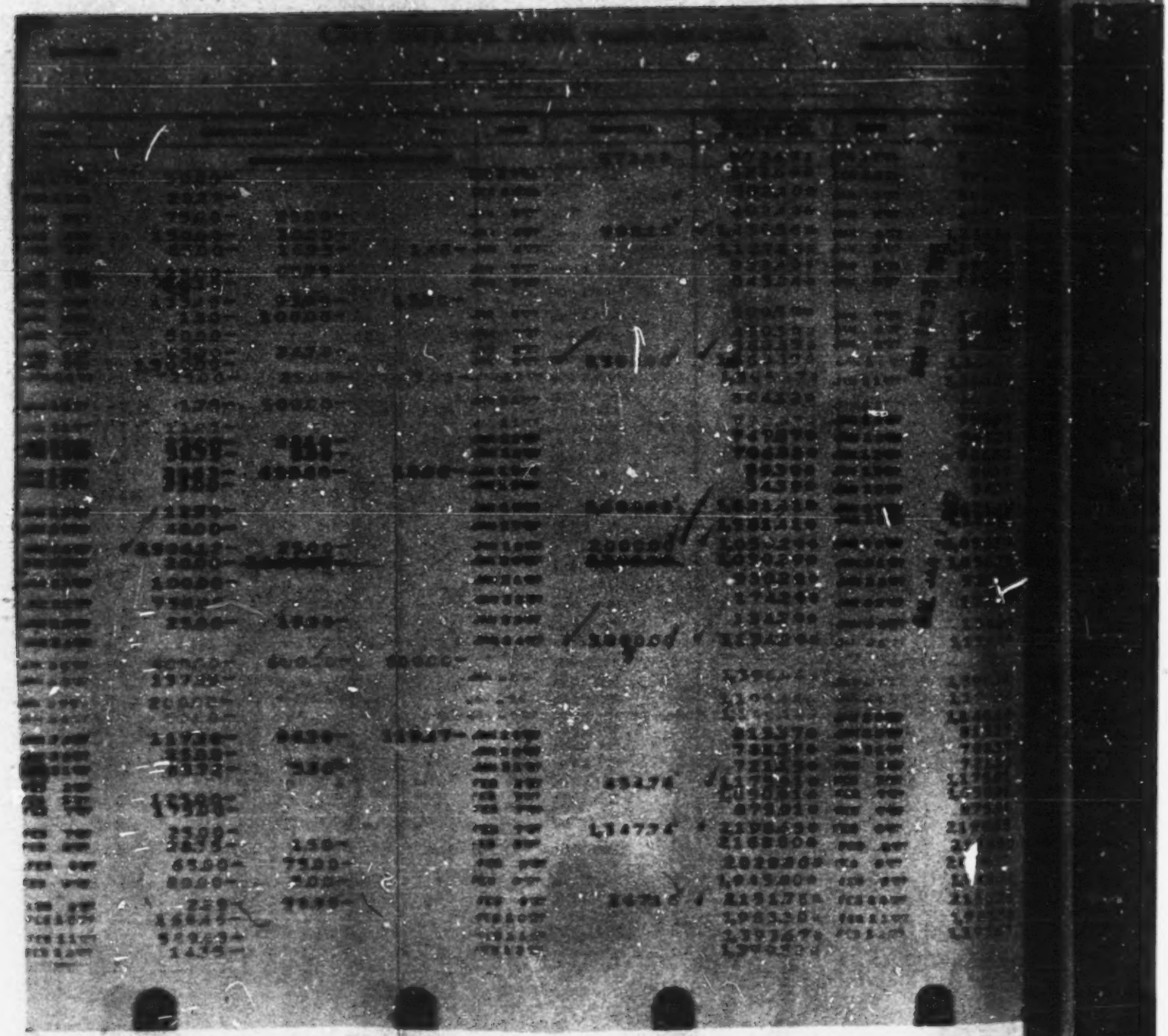


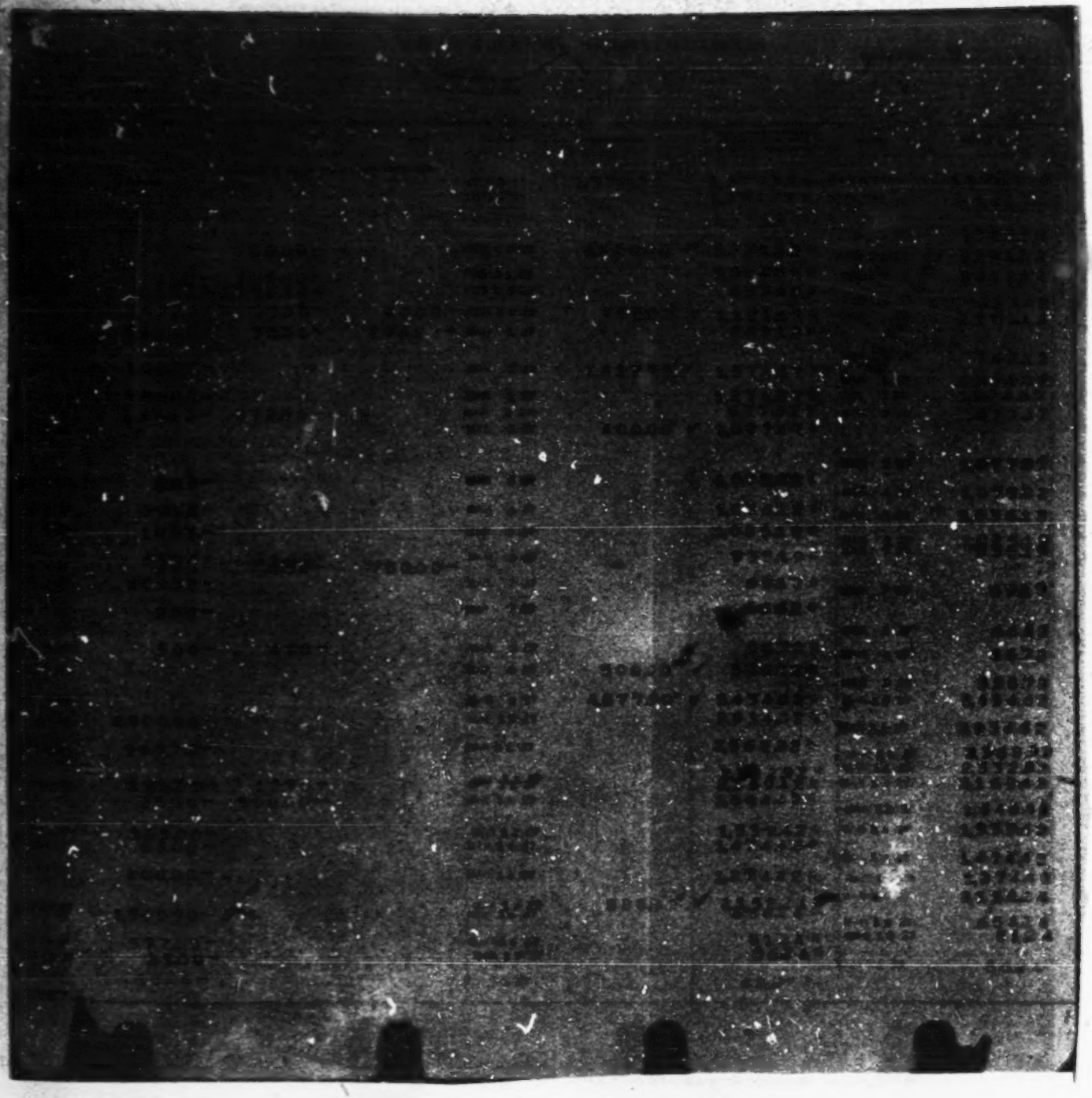


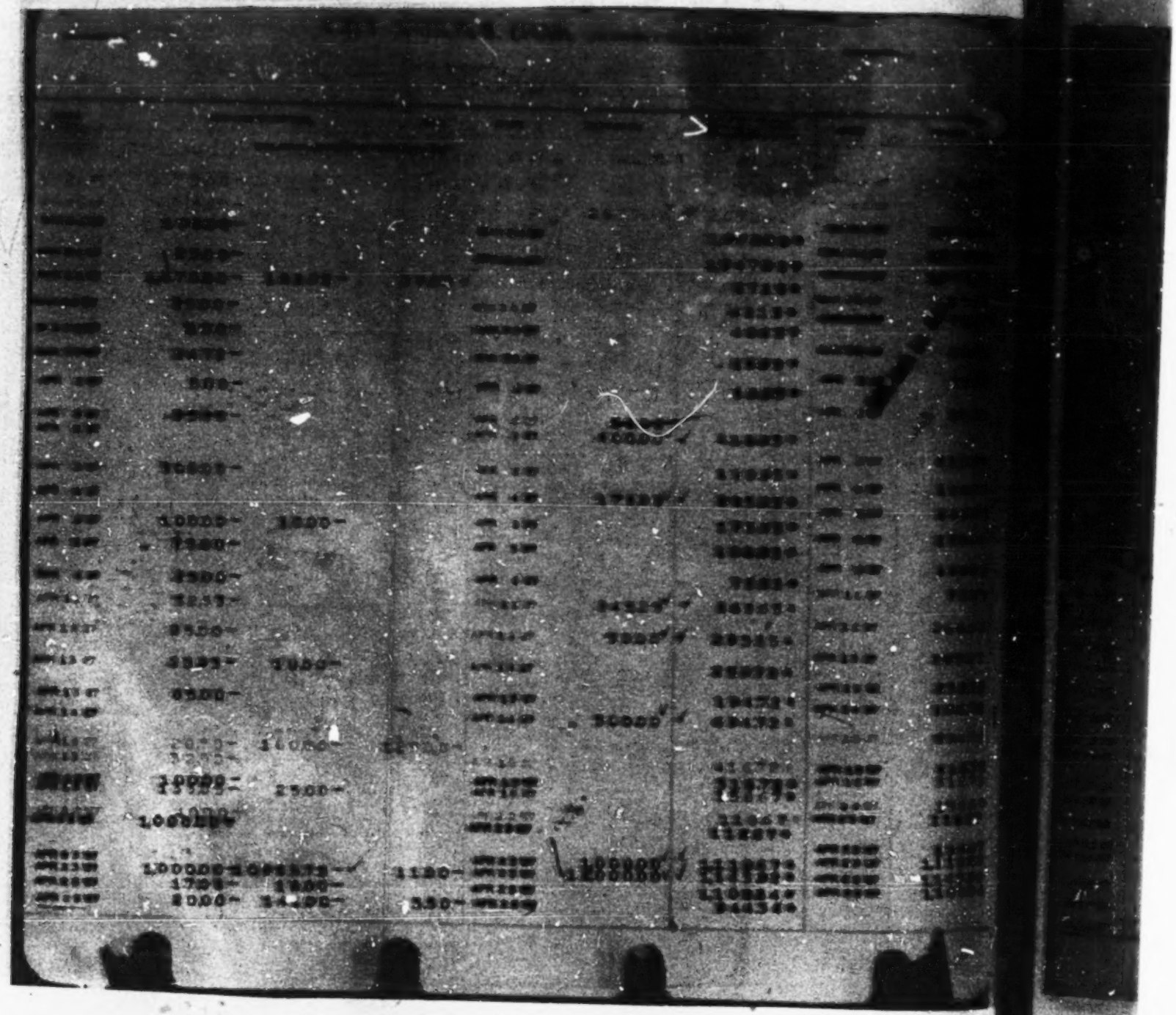


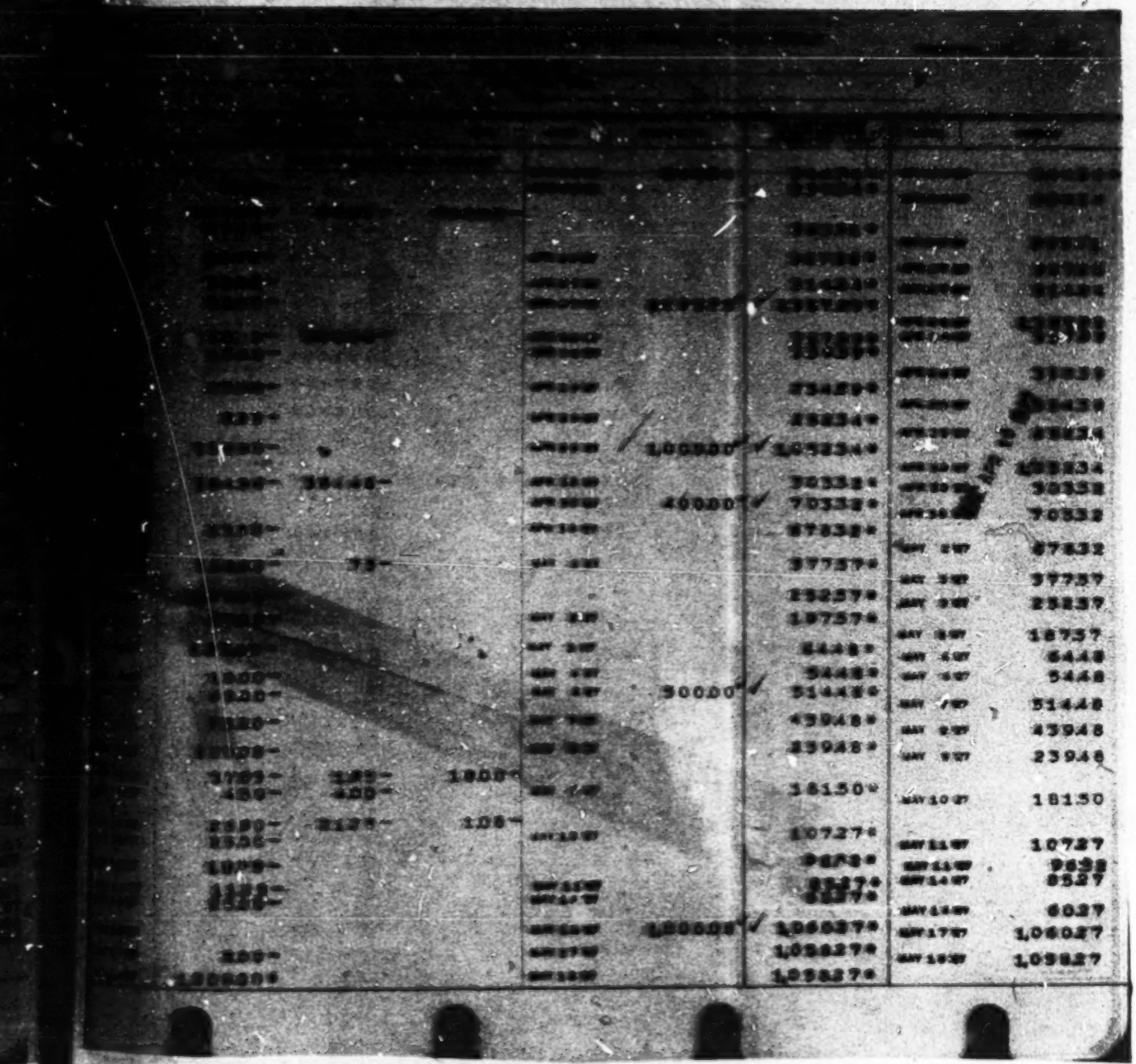


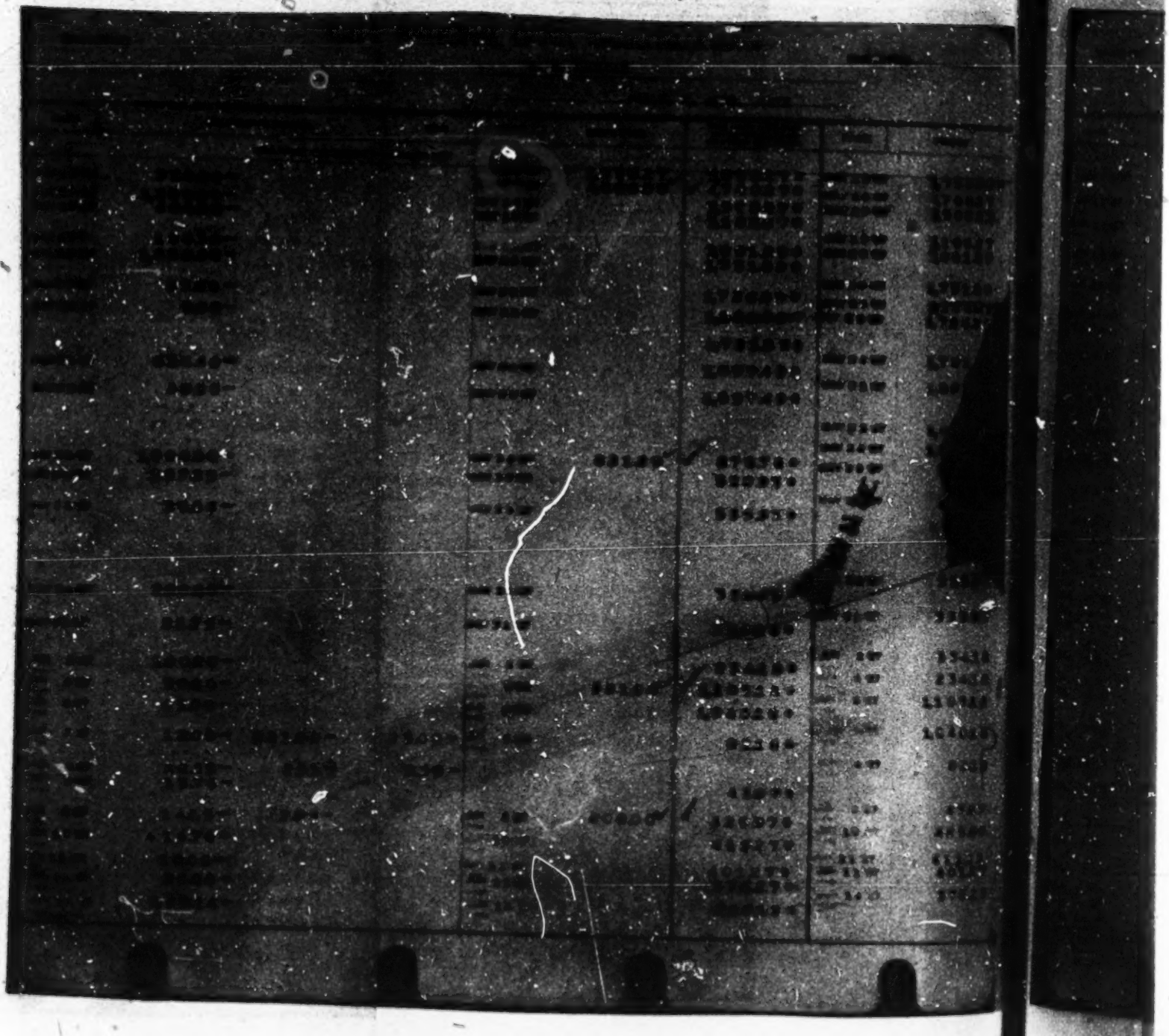


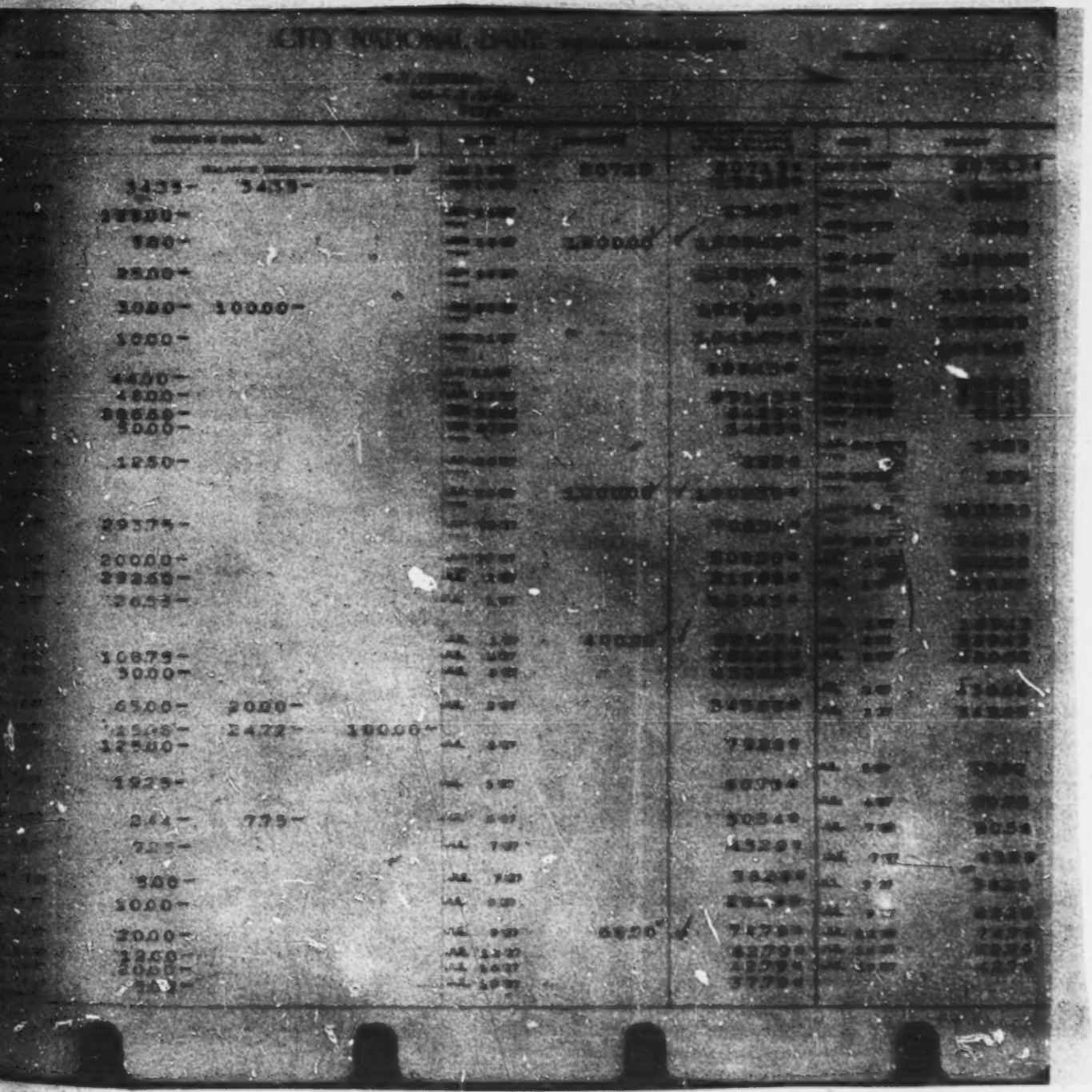


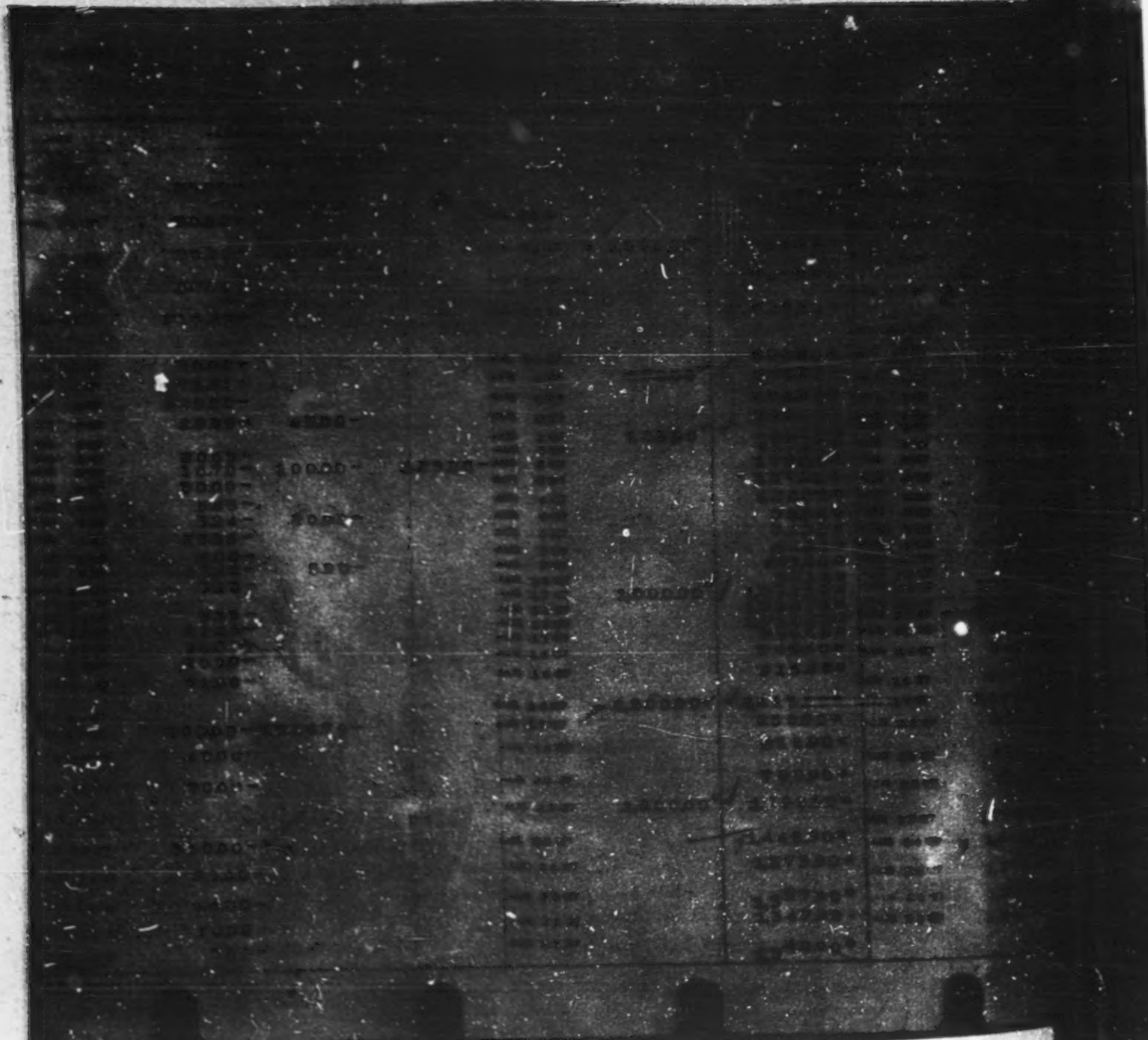


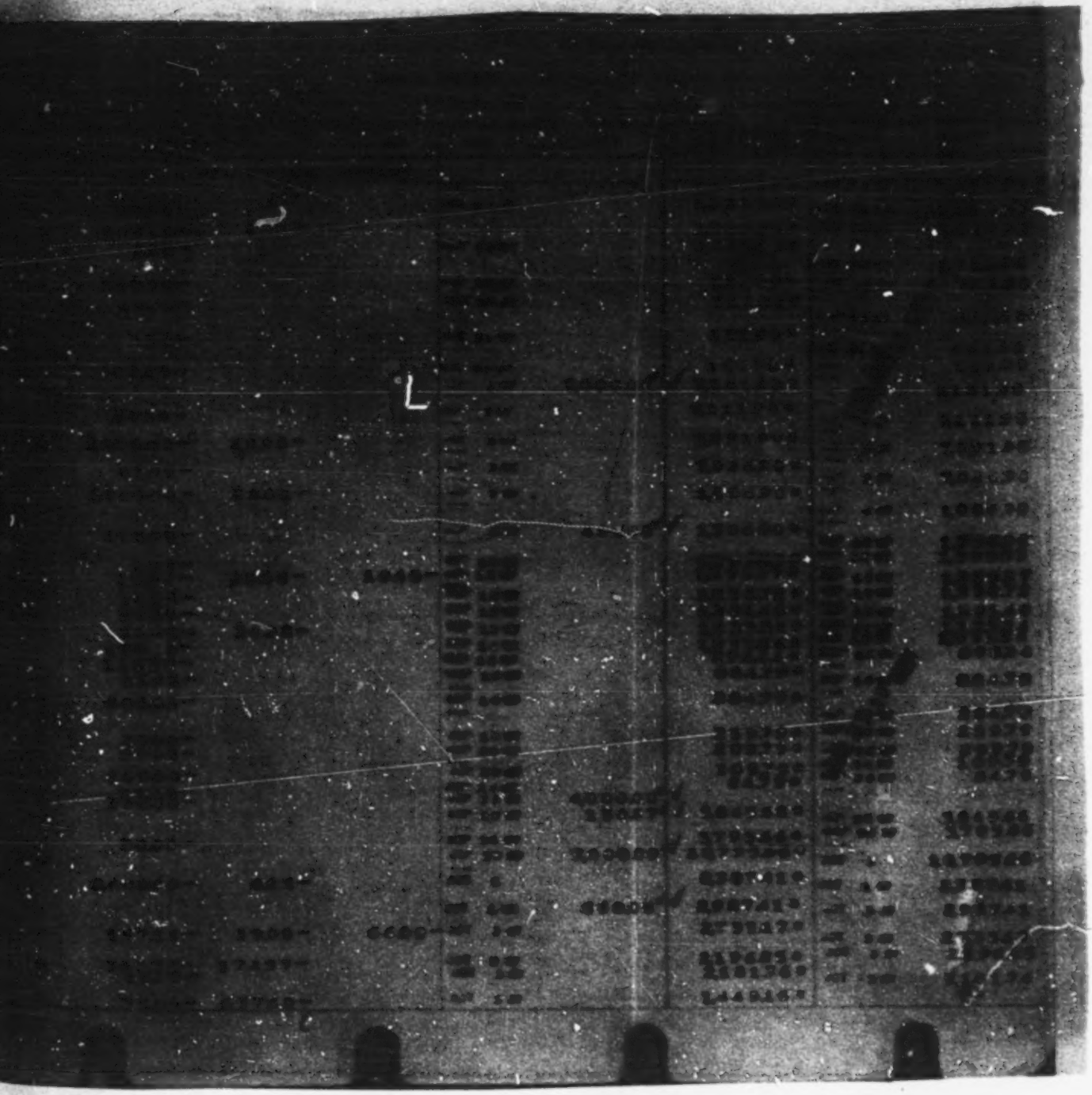


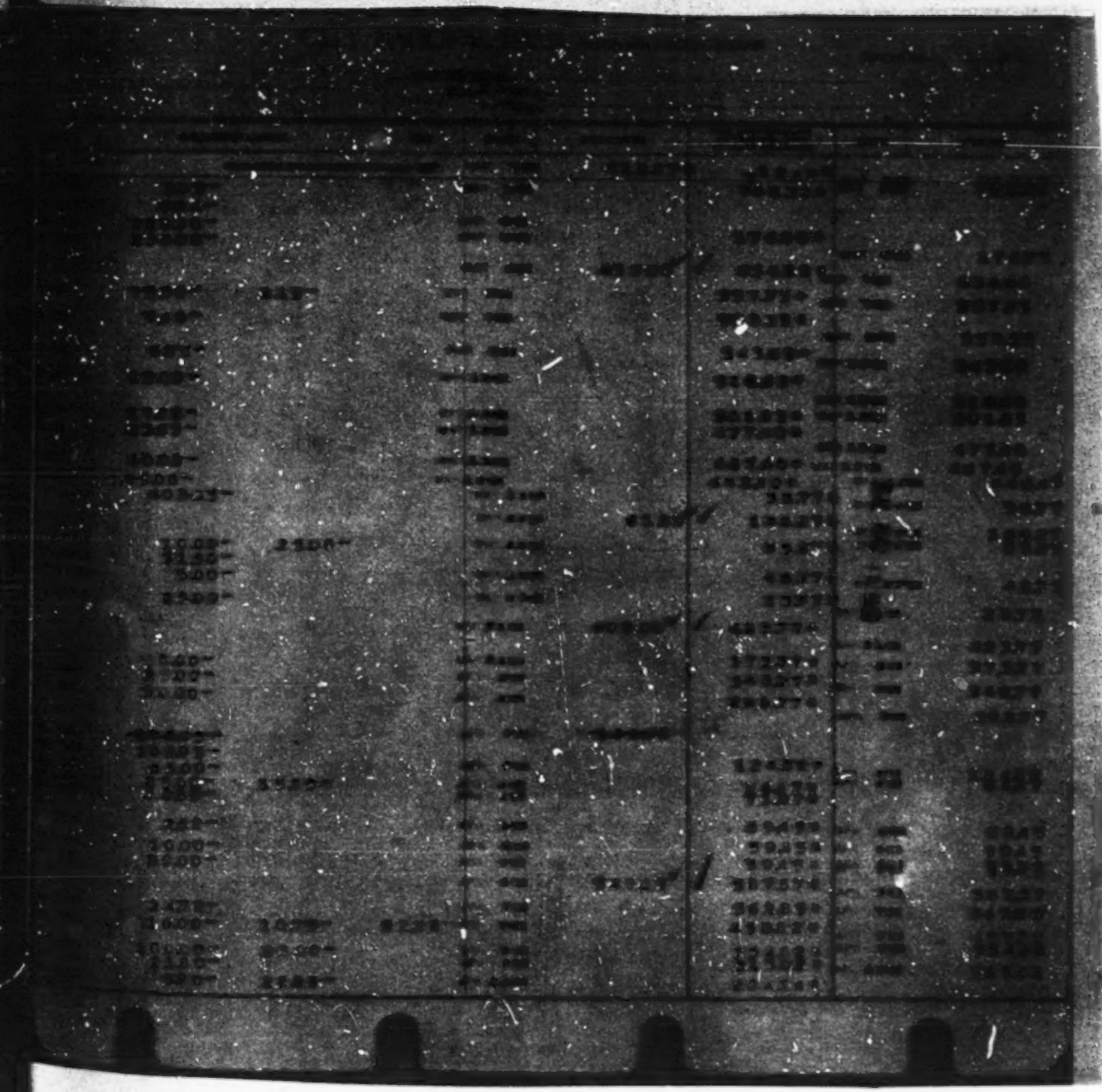


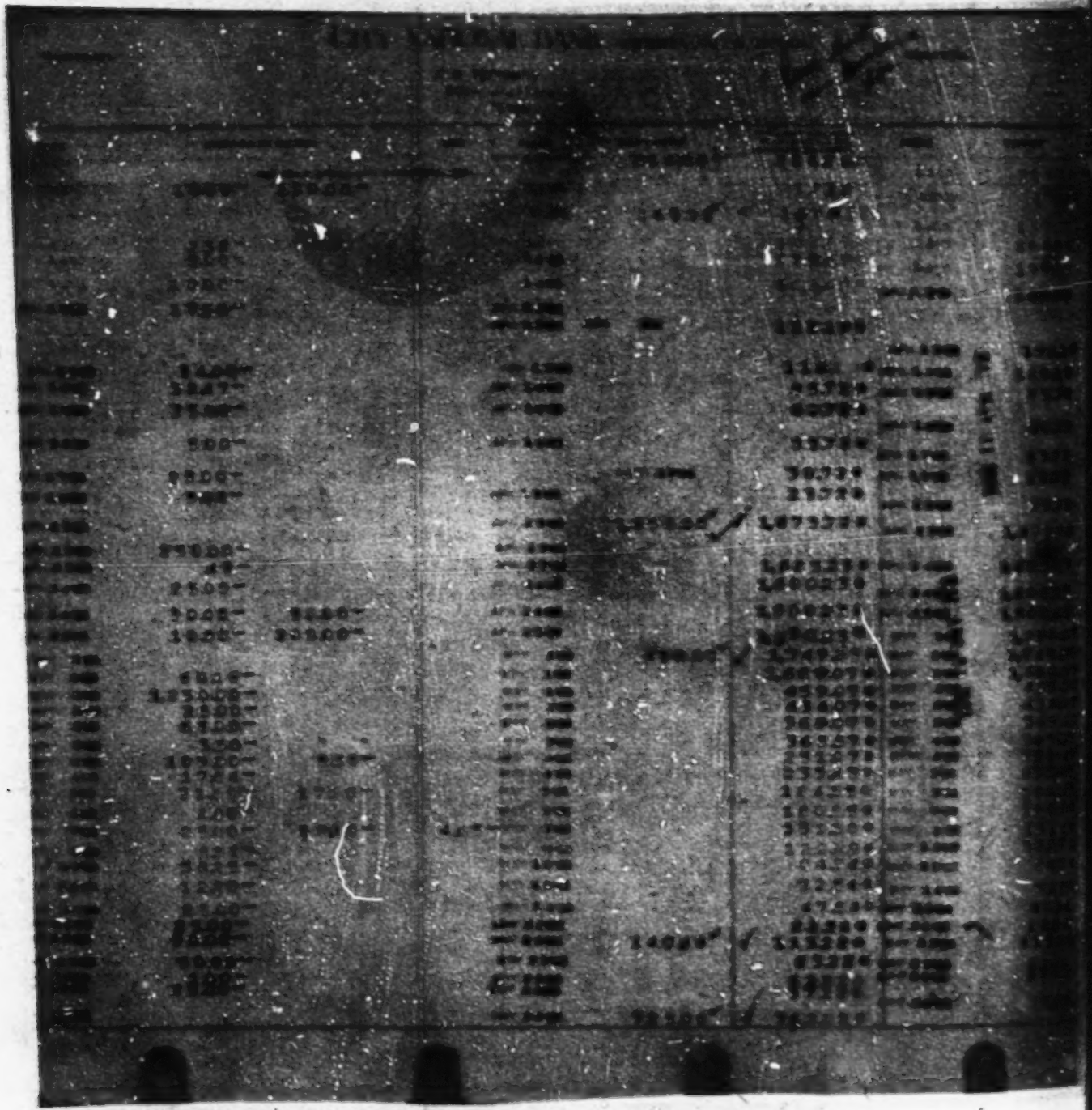


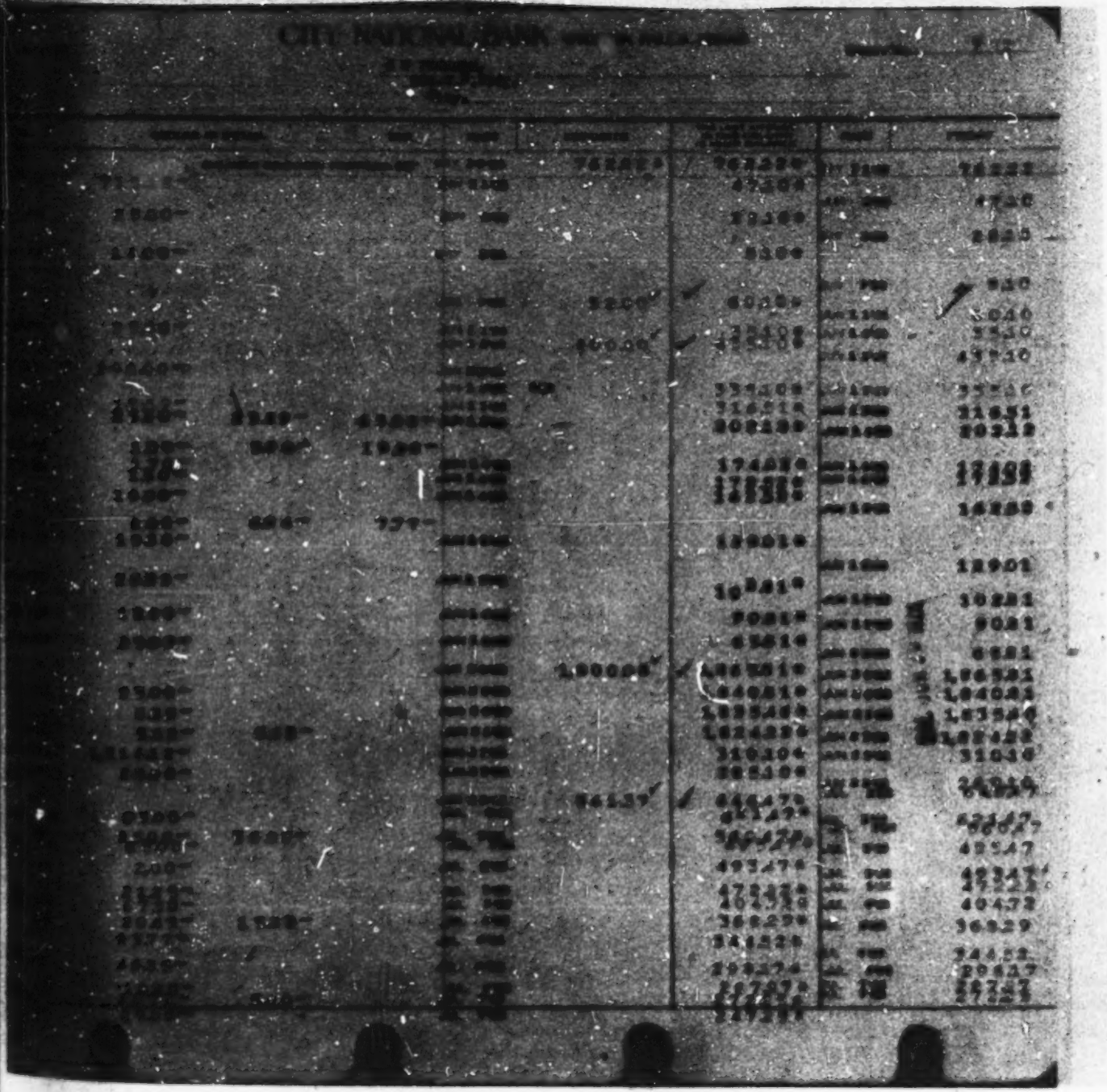


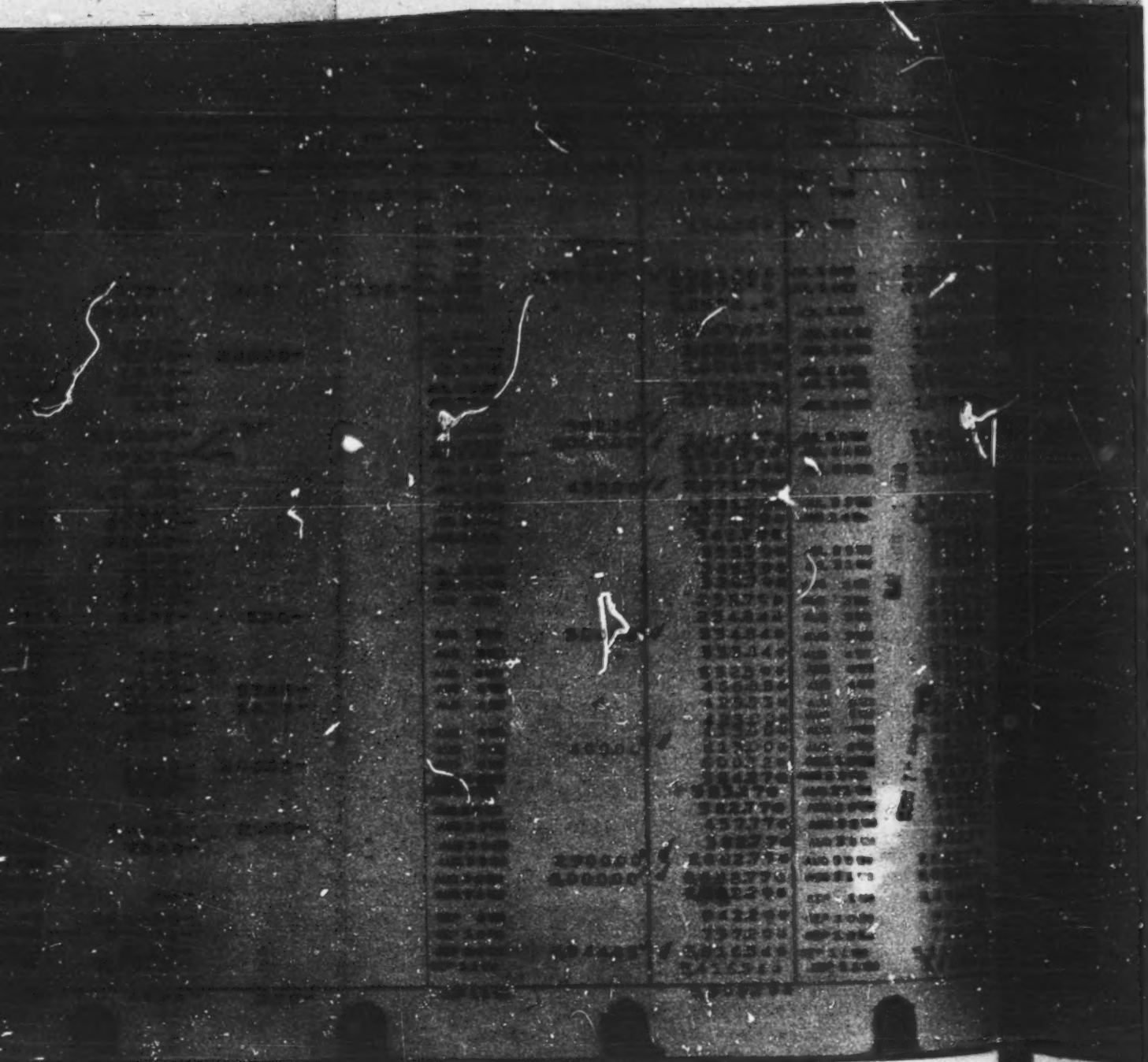


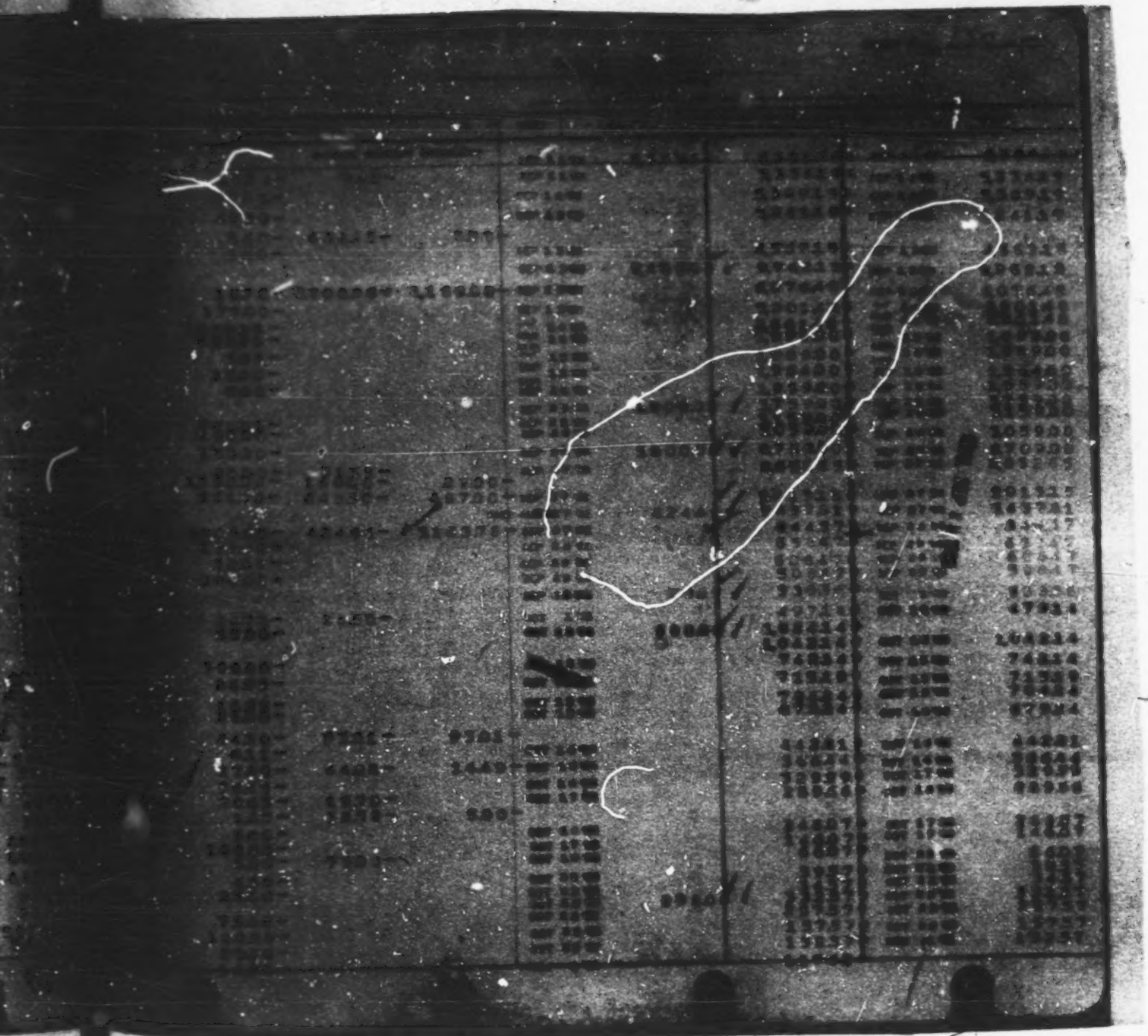


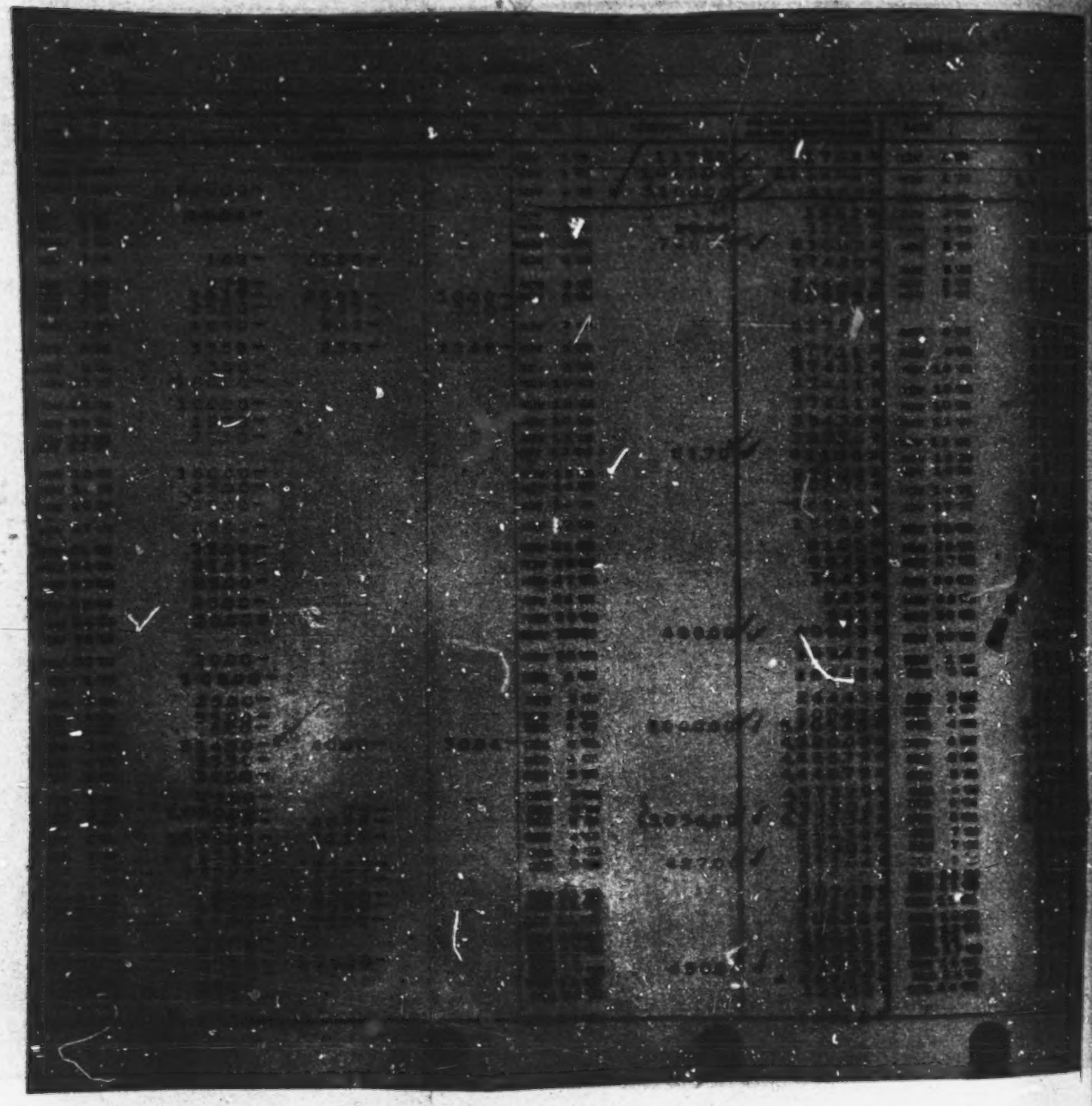


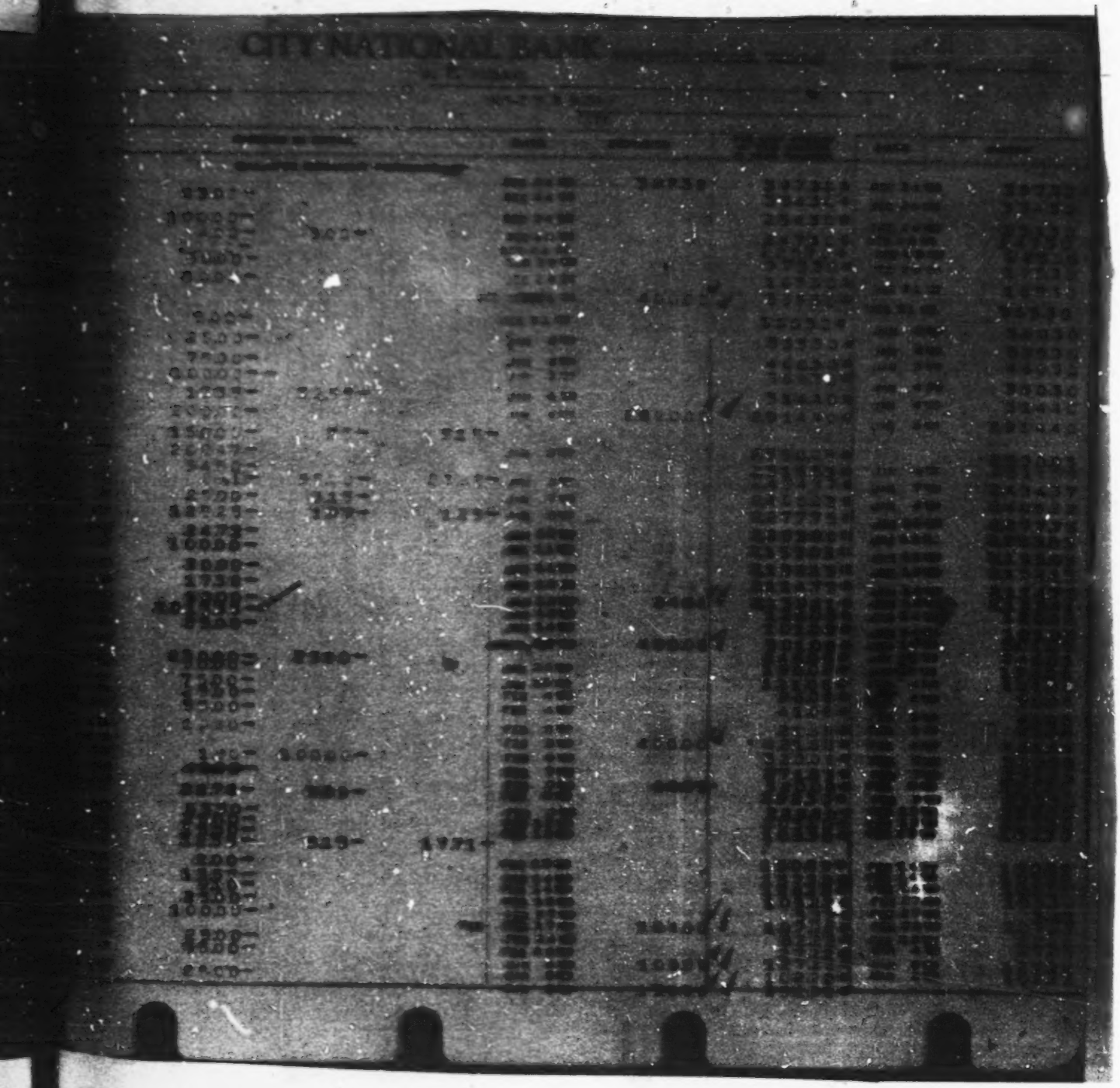


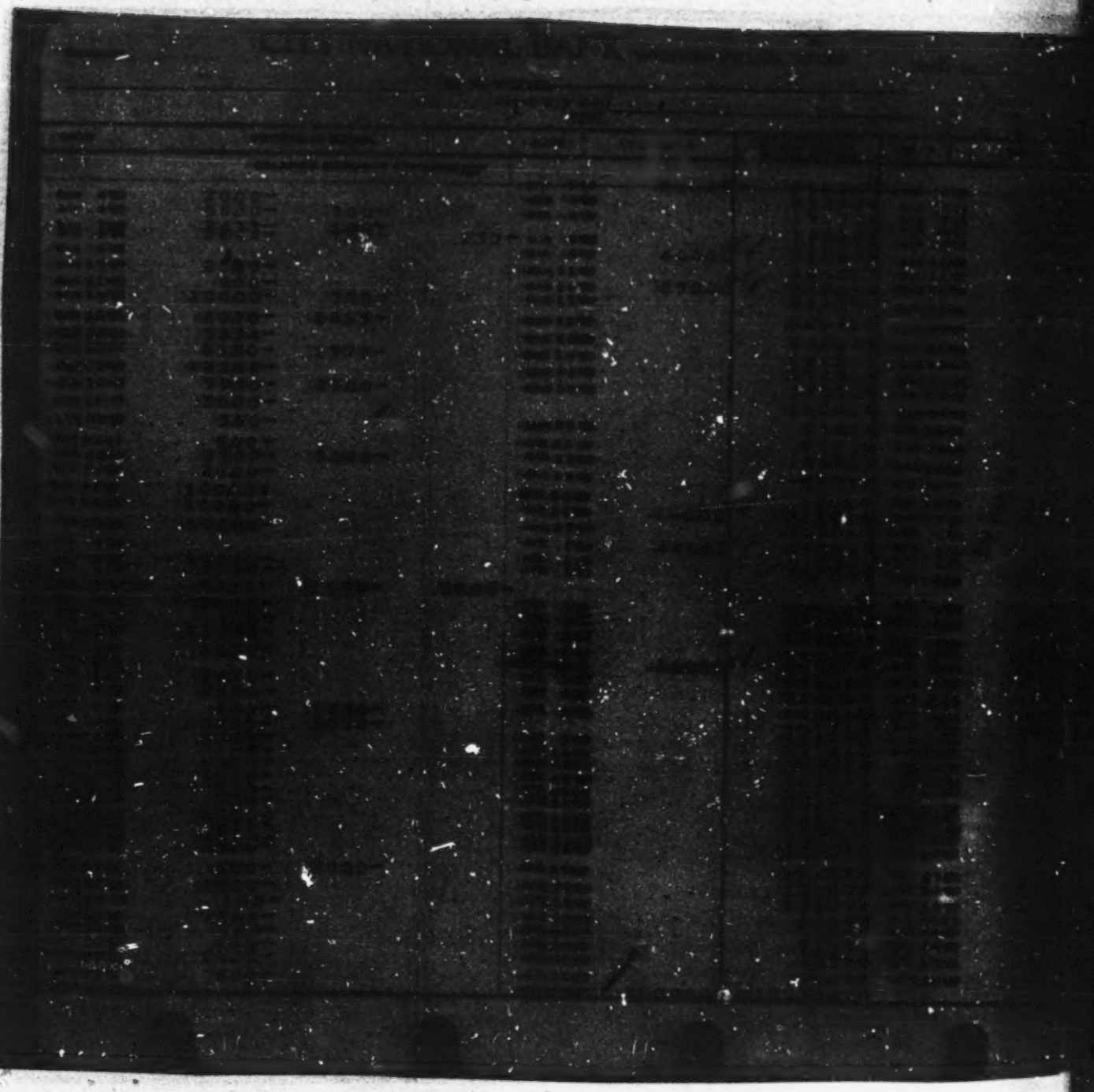


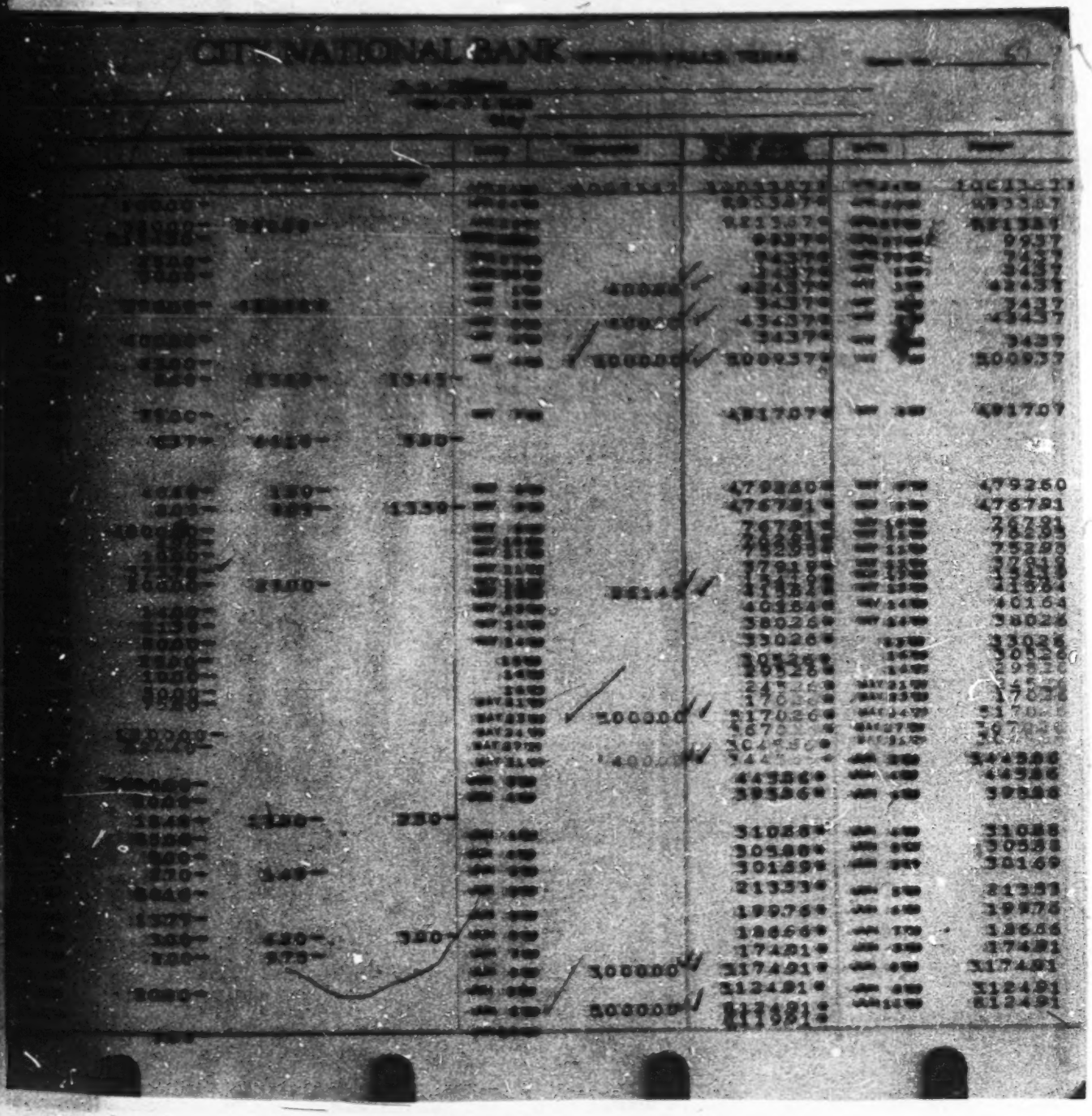







CITY NATIONAL BANK

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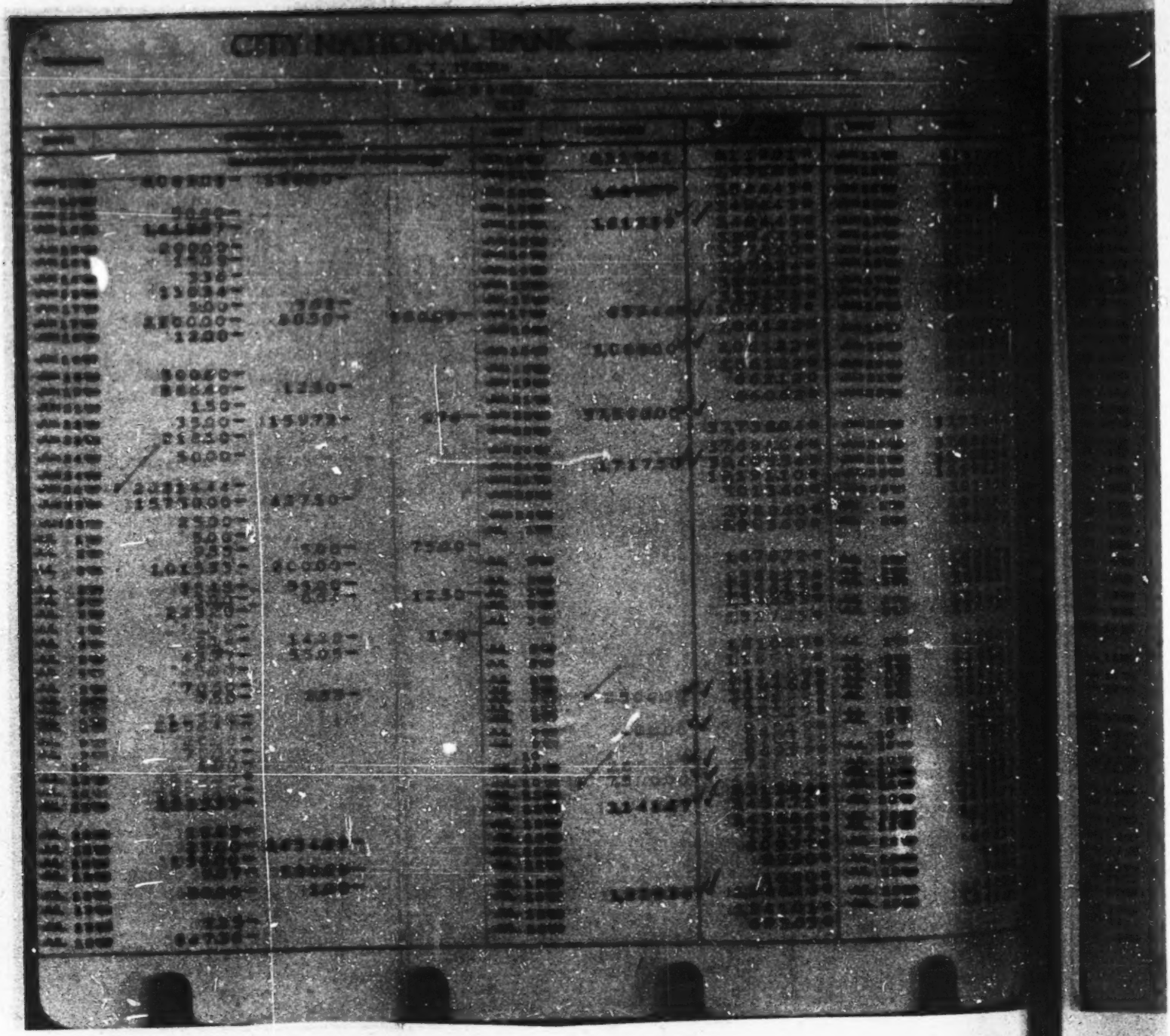
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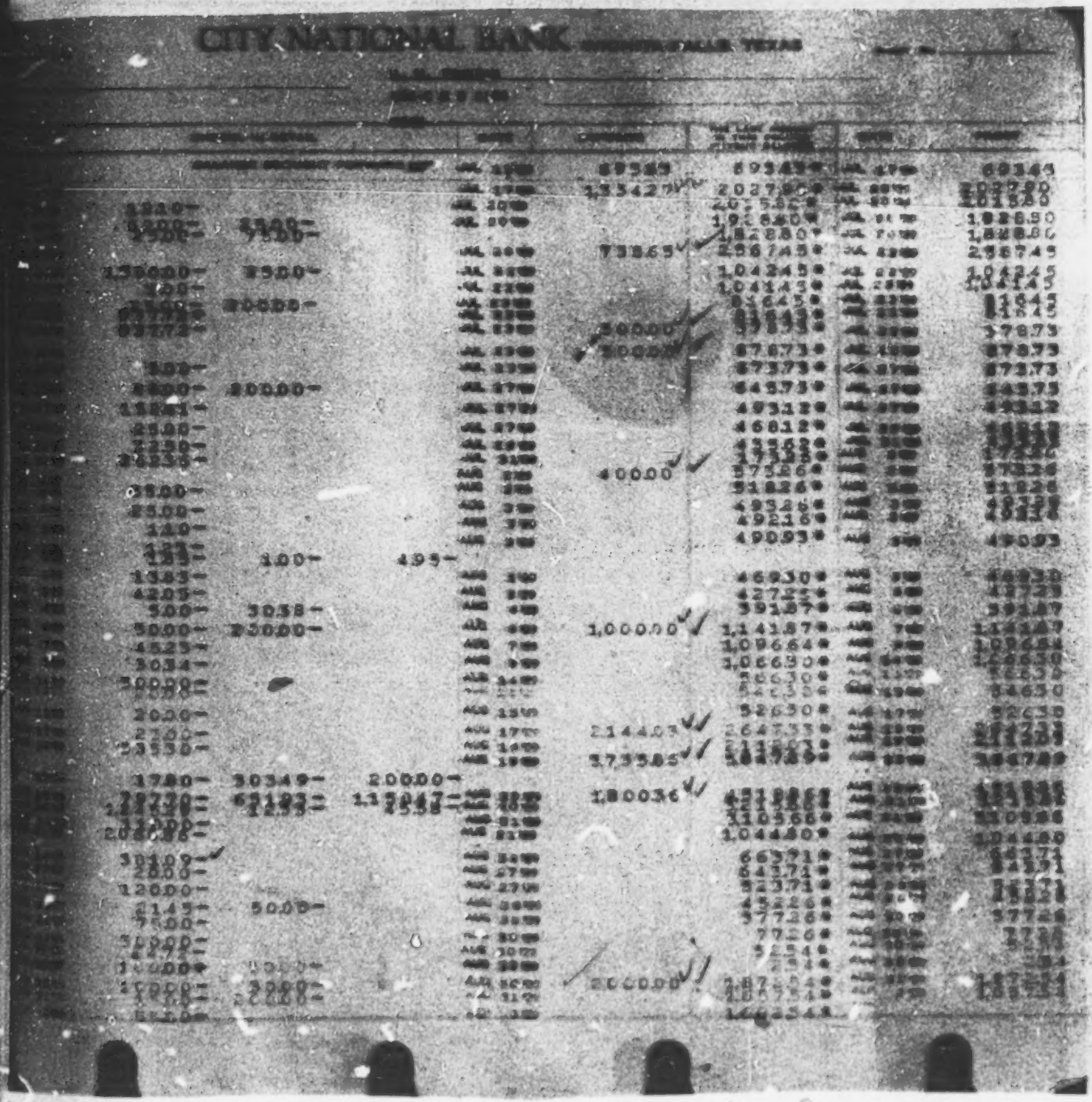
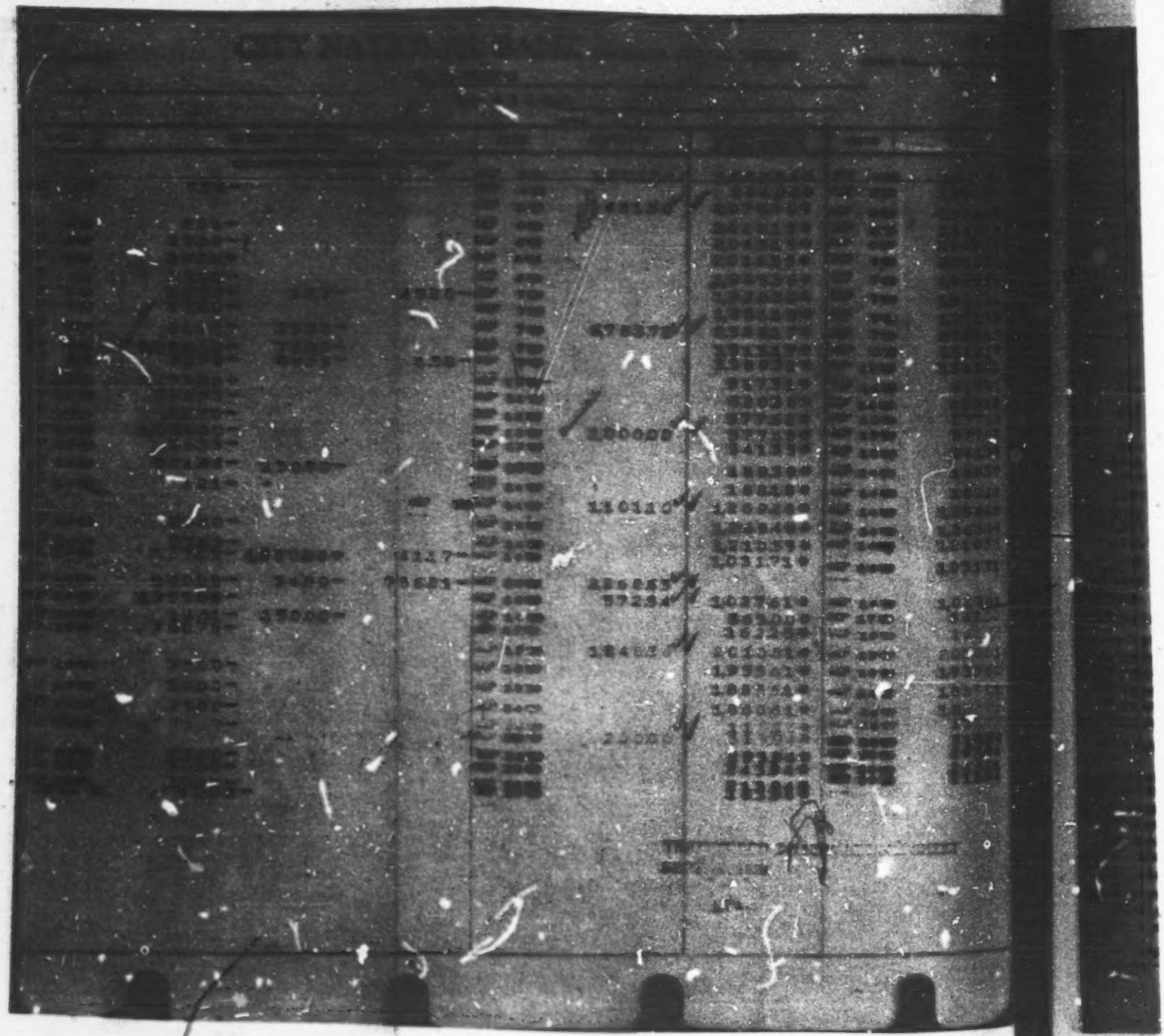
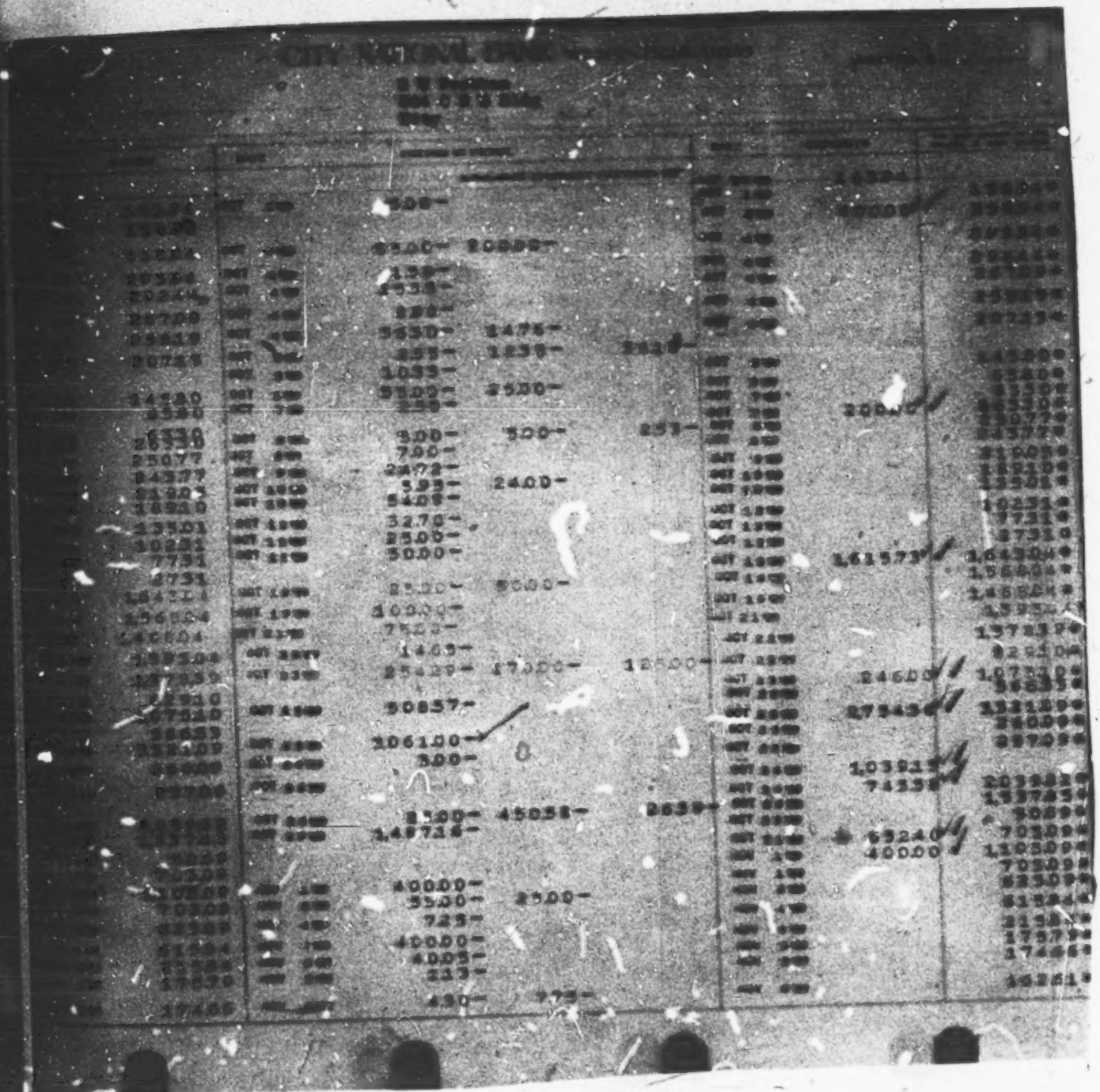
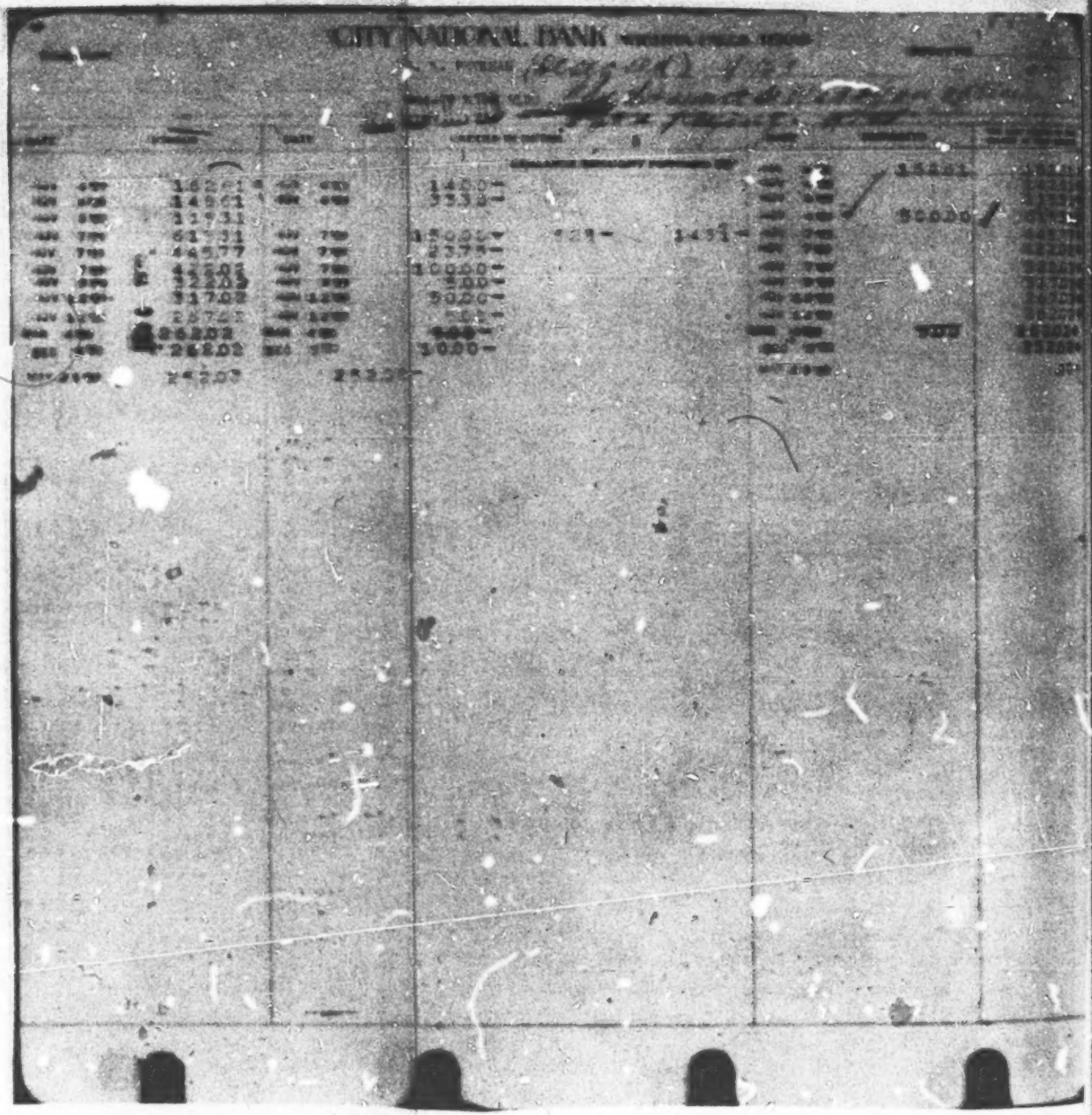

CITY NATIONAL BANK
DALLAS, TEXAS






CITY NATIONAL BANK

684 The Witness:

I have a sheet before me that I have worked up from the original records of the bank whereby it will be reflected the transactions had with reference to additional cash placed in the plaintiff bank. I worked these up from the general books of the City National Bank, that is, from the general ledger, which shows all transactions, the general ledger reflects all totals of the entire operation of the bank from every department; those totals are built up with many separate items. We borrowed some money on October 10, $150,000.00 from the First National Bank of Wichita Falls; borrowed $100,000.00 from the First National Bank in Dallas, for which the bank executed its notes payable for those two items. The notes have been paid, but I do not have them, I am sure they are in the files of the bank, here are part of them. I do not have the first note. I have one note dated October 9, $50,000.00, there was two more of them, but I do not have the first one. I have the renewal of them on January 7. On October 9, 1931, they executed three notes in the amount of $50,000.00 each, when I say "they" I mean the City National Bank of Wichita Falls, due in ninety days, payable to the First National Bank of Wichita Falls, Texas. These notes were indorsed by J. T. Harrell, R. O. Harvey, C. W. Snider, W. L. Robertson, L. H. Cullum, F. T. Timberlake, J. J. Perkins, Frank Kell, N. H. Martin, J. Anderson Kemp, C. E. Basham, Oral Jones, the Langford Investment Company trustee, and P. P. Langford, President. Those notes were renewed on January 7, for ninety days, the notes were signed, the

685 City National Bank of Wichita Falls, by J. T. Harrell, President. They were indorsed Orville Bullington, A. H. Britain, and Leslie Humphrey. I will read all of the indorsements. J. T. Harrell, W. L. Robertson, C. E. Basham, Oral Jones, L. H. Cullum, Frank Kell, R. O. Harvey, N. H. Martin, F. T. Timberlake, J. J. Perkins, Orville Bullington, J. L. McMahon, Langford Investment Company, trustee, for P. P. Langford's children by P. P. Langford, President, C. W. Snider, A. H. Britain,

C. H. Clark, J. Anderson Kemp, and Leslie Humphrey. The notes were renewed on April 6 for $125,000.00, that was 1932. One note for $25,000.00 and one note for $100,000.00. The notes were renewed July 5 for $125,000.00, one for $25,000.00 and one for $100,000.00. They were again renewed on September 3, 1932, for $125,000.00, and again renewed November 2, for $110,000.00; January 31, 1933, renewed for $100,000.00; again renewed May 15, 1932, by City National Bank of Wichita Falls. I do not have the canceled voucher which paid it, I will get that for you. I can not tell you when the notes were executed to the First National Bank in Dallas, but I will get that for you in the morning.

The $100,000.00 loan by the Dallas Bank was evidenced by note of the City National Bank of Wichita Falls, and was indorsed or guaranteed. That obligation was paid, on March 14, 1932, they owed the First National Bank in Dallas, $55,000.00, and I don't recall without looking at the contract whether it was assumed by the new bank or not. On October 13, 1931, the City National
686 Bank of Wichita Falls borrowed $460,000.00 from the Federal Reserve Bank in Dallas—I do not have the original of those notes, that was up and down at various dates, and on March 14, 1933, they owed $386,500.00.

Mr. Rogers:

We offer in evidence the contract between the old and the new bank.

(Marked "Defendant's Exhibit No. 21" as follows:)

687 DEFENDANT'S EXHIBIT 21.

Minutes of the Meeting of the Board of Directors of the City National Bank of Wichita Falls, Held March 15, 1933.

A meeting of the Board of Directors of The City National Bank of Wichita Falls convened on the above date, with the following members present:

Cullum, L. H.
Harrell, J. T.
Humphrey, Leslie
Jeffus, Jack
Jones, Oral
Kell, Frank
Kell, Joe
Perkins, J. J.
Snider, C. W.
Timberlake, F. P.

The meeting was called to order by Frank Kell, Chairman of the Board.

It was stated that in pursuance of the authority given the officers of the Association on March 15, that the Association, acting through its officers, had entered
688 into a contract with the officers of the "City National Bank in Wichita Falls," that said contract which had been entered into was as follows:

"The State of Texas,
County of Wichita.

Whereas, heretofore, on this day, to-wit, the 15th day of March, A. D. 1933, the Board of Directors of The City National Bank of Wichita Falls, at a meeting of said Board, duly and legally called, adopted a resolution which authorized the officers of said Association to commence proceedings for the voluntary liquidation of said

Association, under the provisions of the Revised Statutes of the United States, providing for voluntary liquidation of National Banking Associations and said resolutions also provided for the sale and transfer of certain assets of the said The City National Bank of Wichita Falls, including cash on hand, to the "City National Bank in Wichita Falls," located at Wichita Falls, Texas, in order to fully protect and secure the said "City National Bank in Wichita Falls" for all monies advanced and to be advanced by the said "City National Bank in Wichita Falls" in the assumption and payment of certain liabilities of the said City National Bank of Wichita Falls, as hereinafter provided, and

"Whereas, the resolution of the Board of Directors further authorized and directed the officers of the said The City National Bank of Wichita Falls to make and execute such contracts with the "City National Bank in Wichita Falls" as might be necessary and appropriate, in order to carry out the general purpose of the resolution adopted by the Board of Directors of the said The City National Bank of Wichita Falls, reference to which resolution, found on the minutes of said Association, is here made, and

689

"Whereas, the Board of Directors of the "City National Bank in Wichita Falls," at a meeting of said Board, duly and legally adopted a resolution, whereby the said "City National Bank in Wichita Falls" assumed the payment of the depositors' liabilities, and certain other liabilities of the said The City National Bank of Wichita Falls, as hereinafter provided, upon condition that assets of The City National Bank of Wichita Falls should be sold, transferred, assigned, indorsed and delivered unto the said "City National Bank in Wichita Falls," sufficient in amount and value to fully protect and adequately secure against loss the said "City National Bank in Wichita Falls" for any and all amounts as to which payment is assumed under said resolution adopted by the Board of

Directors of the said "City National Bank in Wichita Falls, and

Whereas, said Board of Directors of the "City National Bank in Wichita Falls" authorized the officers of said Association to make such contract as might be necessary to carry out the provisions of such resolution, the details of which were to be left to the discretion of said officers.

"Now, Therefore, these "Articles of Agreement" entered into, by and between the said "The City National Bank of Wichita Falls," hereinafter called First
690 Party, and the said "City National Bank in Wichita Falls," hereinafter called Second Party.

Witnesseth:

(1) The First Party has sold, transferred, assigned and indorsed, and does by these presents hereby sell, transfer, assign and indorse unto the Second Party, its successors and assigns, the bills receivable and other negotiable instruments, cash items, choses in action, bonds, warrants and other assets, as shown by Exhibit "A" attached hereto and made a part of this contract, and the said First Party has also transferred, assigned and delivered unto the said Second Party all its cash now on hand, the total face value of the assets sold, transferred, assigned, indorsed and delivered unto the said Second Party being in the aggregate sum of Three Million Four Hundred Fifty-five Thousand Six Hundred Thirteen and 43/100 ($3,455,613.43) Dollars.

"To Have and to Hold the same unto the said Second Party, its successors and assigns, vendees and indorsees, and the said First Party agrees, for itself and its successors, to warrant and forever defend unto the said Second Party, its successors and assigns, indorsees and vendees,

the title to all the assets this day sold, transferred, assigned, indorsed and delivered unto the said Second Party, against any and all persons whomsoever claiming or to claim the same or any part thereof.

(2) First Party also agrees to and with Second Party that Second Party may renew and extend the
691 date of payment of any bills receivable or other negotiable instruments this day sold, transferred and assigned to it from time to time, without notice to the said First Party, or its successors, and in order to fix the liability of the First Party upon its indorsement absolutely and unconditionally, the said First Party agrees, for itself and its successors, that as indorser it waives presentment for payment, protest and notice of protest, and non-payment of any of said bills receivable or other negotiable instruments, or any kind or character and agrees and consents that Second Party may renew any of said bills receivable as long as it may desire, and may extend the time of payment of any of said bills receivable, and may alter or change the collateral securing any of said bills receivable in any such manner as the officers of said Second Party may, in their discretion deem best, all without in any manner releasing or impairing the liability of the said First Party as an indorser upon said bills receivable or other negotiable instruments.

The First Party likewise agrees with the Second Party that it may sell, transfer, assign, indorse or deliver any of said bills receivable or other negotiable instruments, or any other of the assets this day purchased, to any other purchaser or purchasers, and that the purchaser or purchasers or indorsers, vendees or transferees of Second Party shall have all the rights extended by the First Party to Second Party under this contract.

(3) The First Party also agrees with Second Party that if Second Party shall at any time conclude
692 that any of the bills receivable or other negotiable instruments, or renewals thereof so in-

dorsed to it by First Party, are not worth their face value, that is the amount of the principal shown to be due on said bills receivable or other negotiable instruments, then and in that event the said First Party will upon demand being made upon it or its successors by the said Second Party immediately take up and pay off all of such doubtful bills receivable or other negotiable instruments, or renewals thereof, in cash, in which event the Second Party will transfer such doubtful bills receivable or other negotiable instruments to the First Party without recourse, or if acceptable to the Second Party, the First Party may substitute other bills receivable or other negotiable instruments or assets, or the promissory note of First Party in an amount sufficient to discharge and take up the bills receivable or other negotiable instruments which the Second Party may not believe collectable and worth their face value, and upon which Second Party may have demanded payment or substitution, and in the event First Party refuses or fails, upon the demand of Second Party, to pay cash or substitute other acceptable assets for such bills receivable or other negotiable instruments which Second Party may think doubtful and not worth their face value, then and in that event, it is agreed that the aggregate amount of said bills receivable or other negotiable instruments concerning which the said Second Party may be in doubt as to the value
693 thereof, shall constitute a binding and valid obligation against First Party, its successors and assigns, due and payable upon demand, and suit may be brought against the said First Party for the aggregate amount of any of such bills receivable or other negotiable instruments, or either of them, and ten per cent additional of the amount of the principal of any or all of such bills receivable or other negotiable instruments shall be added thereto as attorneys' fees, and this right and privilege shall inure to the benefit of any holder or holders of any of such bills receivable or other negotiable instruments indorsed by First Party to Second Party, and such holder or holders of any of such bills receivable or

other negotiable instruments shall in like manner become the creditor of First Party by reason of becoming the owner or holder of any of said bills receivable or other negotiable instruments which have been unconditionally indorsed by the said First Party as herein provided.

It is also agreed that Second Party may at its option allow First Party to substitute other bills receivable or negotiable instruments, or its promissory note or notes in lieu of those it is called upon to redeem because doubtful, and as to any such bills receivable or other negotiable instruments substituted in lieu of those of doubtful value, the said First Party agrees that the provisions of this section of this contract shall apply to said substituted bills receivable or other negotiable instruments in the same manner as is herein provided as to the bills re-
694 ceivable and other negotiable instruments this day sold, transferred, delivered and indorsed to the said Second Party, and this obligation shall likewise be valid and binding upon the said First Party, its successors and assigns.

(4) To further secure Second Party in its assumption of the liabilities of the First Party to its depositors and certain other creditors herein mentioned, it is agreed that all of the remaining assets of First Party not this day transferred to Second Party, shall be pledged to J. T. Harrell, Trustee, and that the funds derived from the sale of such assets or any of them, or the collection of any of such obligations, shall constitute a trust fund which shall be kept intact, and on deposit in some solvent bank, for the purpose of securing Second Party upon the indorsement which has this day been made, or which may hereafter be made upon said bills receivable or other negotiable instruments purchased from First Party and for the purpose of redeeming any assets which may become doubtful, this additional security being hereby given and pledged to Second Party for the purpose of

absolutely securing and making good the indorsement of the First Party upon its said bills receivable and other negotiable instruments, sold, transferred, assigned and indorsed to Second Party.

(5) The First Party, until final liquidation of its affairs, and final settlement with its shareholders, agrees to maintain its corporate existence and agrees that its officers and directors will at all times, when
695 called upon to do so by Second Party, execute and deliver in the name of First Party all other and further instruments of writing of any kind or character which the officers of Second Party may deem necessary to fully effectuate the transfer of the assets this day delivered.

(6) In consideration of the covenants and agreements herein made by First Party, it is hereby agreed by Second Party that it will assume, and that it does by these presents hereby assume and promise to pay when and as the same are presented for payment, all of the depositors of First Party, as shown by the books of First Party at the close of business on March 14, A. D. 1933, said deposits being in the aggregate of Three Million Two Hundred Eighty-Six Thousand Seven Hundred Seven and 46/100 ($3,286,707.46) Dollars, and no more, and it also assumes and agrees to pay certain other liabilities of said First Party, amounting to Five Hundred Sixty-Six Thousand Five Hundred and no/100 ($566,500.00) Dollars, as shown by a list of such liabilities, attached hereto and marked Exhibit "B" and made a part hereof, and no more.

(7) It is distinctly understood and agreed between the parties hereto, that neither the resolutions of the Board of Directors of the respective parties hereto, nor this contract, nor any other act or agreement had or made between the parties hereto, shall in any manner be so construed as to relieve the shareholders of First Party

from their legal liability as shareholders to re-
696 spond, in the event it may be necessary to have recourse upon such shareholders' liability for any deficit which may exist in the value of the bills receivable or other negotiable instruments this day sold, transferred and unconditionally guaranteed by First Party to Second Party, it being the intention of the parties hereto that should Second Party decide that the bills receivable or other negotiable instruments or other assets this day sold, transferred and assigned by First Party, are insufficient to pay the liabilities of First Party which have been paid and which have been assumed by Second Party, then and in that event the Second Party, its successors and assigns, shall have recourse against the shareholders of First Party, as provided by Section 64, Title 12, United States Code Annotated, and other provisions of said Title 12, for any deficiency and for full and complete enforcement of this contract, according to its terms, the intention being to absolutely bind the First Party by unconditional indorsement and unconditional warranty, as hereinabove set forth, for the payment of the face value and interest due upon all the bills receivable and other negotiable instruments this day sold, assigned, transferred and delivered to Second Party, and in case the face value of, that is the principal of any of said bills receivable, are not collected by the said Second Party or any holder or holders thereof, together with all interest due or to become due thereon, according to the face, tenor and effect thereof, or in case said bills receivable
697 or other negotiable instruments, bonds, warrants, cash items and choses in action are at any time deemed uncollectable or doubtful by the said Second Party, or any holder thereof, and First Party fails to take up said bills receivable in cash or to substitute other acceptable assets to the satisfaction of Second Party, then and in that event, the Second Party, its successors, assigns and indorsers, shall have a valid and binding obligation against the said First Party for the principal, interest and attorneys' fees due on said bills receivable and other

negotiable instruments, according to the face, tenor and effect thereof, and may proceed against First Party, or its shareholders to enforce the same, and no lack of diligence on the part of the Second Party, or any of its indorsees, shall constitute any defense to such cause of action, provided that no demand shall be made by Second Party against First Party, and its shareholders, after three years from the date hereof, during which time the guarantee herein and hereby made by First Party to Second Party shall remain in full force and effect.

(8) It is also agreed between the parties hereto, that inasmuch as some of the bills receivable and other negotiable instruments which First Party has this day sold, transferred and assigned to Second Party, have already been pledged to secure other bills payable of First Party, that as to such bills receivable or other negotiable instruments which First Party is unable upon this date to make delivery to Second Party, Second Party may at
698 its option require First Party to execute and deliver to Second Party the promissory note of First Party for the face value of all those bills receivable or other negotiable instruments which First Party has sold to Second Party, and is unable to deliver to Second Party upon this date.

(9) It is also understood and agreed between the parties hereto that as to First Party, this guarantee shall be a continuing guarantee, and apply to and be binding upon First Party, its successors and assigns, as to any renewals of notes sold, transferred and delivered by First Party to Second Party during the existence of this agreement, and it also agreed that Second Party may grant time or other indulgence to the makers of the bills receivable and other negotiable instruments sold, transferred, delivered and indorsed by First Party to Second Party, and may also make and grant extension and renewals from time to time to the makers of said bills receivable and other negotiable instruments, all without affecting or in any way

impairing the validity of this agreement, or the liability of First Party herein.

Second Party may also change the collateral on any of the bills receivable and other negotiable instruments, bonds, warrants, cash items and choses in action, or may make such releases or exchanges of collateral as may to the Second Party and its officers seem best, to effectuate the final collection of the bills receivable and other negotiable instruments, bonds, warrants, cash items
699 and choses in action so indorsed and guaranteed by First Party herein, and this without in any manner affecting or in any way impairing the validity of either the guarantee or indorsement made by First Party to Second Party herein.

"In Witness Whereof, the parties hereto have caused these presents to be signed and delivered in duplicate, each an original, by their proper corporate officers, and have caused their proper corporate seals to be hereto affixed, this the 15th day of March, A. D., 1933. Erasures and interlineations made and approved before signing.

THE CITY NATIONAL BANK OF WICHITA FALLS,
By J. T. HARRELL,
President, First Party.

Attest:
ORAL JONES,
Cashier.

CITY NATIONAL BANK IN WICHITA FALLS,
By J. T. HARRELL,
President, Second Party.

Attest:
JACK JEFFUS,
Cashier.

## EXHIBIT "A."

List of Bills Receivable and other Negotiable Instruments, Cash Items, Choses in Action, Bonds, Warrants and other assets this day sold, transferred, assigned, indorsed and delivered to City National Bank in Wichita Falls by The City National Bank of Wichita Falls,
700 as per contract executed on March 15, 1933, to which this list is hereby attached and made a part of:

| | |
|---|---|
| Cash, Cash Items and due from banks | $ 191,286.24 |
| United States Bonds and Securities | 1,064,000.00 |
| Other Stocks and Bonds (County Warrants) | 65,085.93 |
| Loans and Discounts | 2,532,835.29 |
| Total | $3,853,207.46 |

## EXHIBIT "B."

List of certain other liabilities besides deposits, totaling $3,286,707.46, as shown by books of The City National Bank of Wichita Falls at the close of business on March 14, 1933, which liabilities are assumed by City National Bank in Wichita Falls, as per contract executed March 15, 1933, to which this exhibit is attached and made a part of.

### Bills Payable.

| | |
|---|---|
| First National Bank, Wichita Falls, Texas | $124,000.00 |
| First National Bank in Dallas, Dallas, Texas | 55,000.00 |
| Federal Reserve Bank of Dallas, Dallas, Texas | 386,500.00 |
| Total | $566,500.00 |

The Chairman stated that in addition to the powers given the officers by the resolution passed by the Board

of Directors of this Association also desired that the Directors ratify and confirm the contract as executed between the two Associations, to-wit, "The City
701 National Bank of Wichita Falls," and the said "City National Bank in Wichita Falls,"

Whereupon, the following resolution was offered by C. W. Snider and seconded by L. H. Cullum, to-wit:

"Be It Resolved by the Board of Directors of this Association that the Board ratify and confirm in all things the action of the officers of this Association in executing the contract between this Association and the "City National Bank in Wichita Falls," dated March 15, 1933, and,

"Be It Further Resolved, that a copy of the contract executed between the two Associations be spread upon the minutes of this Association."

Whereupon, the resolution was submitted to a vote of the Directors, and was unanimously adopted.

Upon motion duly made and seconded, the meeting was adjourned.

(S) W. L. ROBERTSON,
Vice President.
(S) JACK JEFFUS,
Ass't Secretary.

702 The Wtiness:

I have now the original minute book of the City National Bank of Wichita Falls, meetings of the stockholders, June 30, 1933. This is the first meeting that the stockholders had.

Mr. Rogers:

I offer in evidence the minutes of a call meeting of the stockholders of the City National Bank, held June 30, 1933.

(Marked "Defendant's Exhibit No. 22" and reading as follows:)

DEFENDANT'S EXHIBIT 22.

Minutes of a Called Meeting of the Stockholders of The City National Bank of Wichita Falls held June 30, 1933.

The meeting was called to order by the President.

703 The Judges announced that a majority of stock was represented in person, or by proxy, as follows:

| In Person | No. Shares |
|---|---|
| Abbott, W. S. | 20 |
| Basham, C. E. | 113 |
| Bassett, L. N. | 40 |
| Boyd, Mrs. Sarah E. | 70 |
| Britain, A. H. | 97 |
| Bullington, Orville | 250 |
| Cullum, L. H. | 140 |
| Duncan, T. P. | 67 |
| Harrell, J. T. | 554 |
| Harvey, R. O. | 240 |
| Jeffus, Jack M. | 12 |
| Jones, Oral | 200 |
| Kell, Joe A. | 10 |
| Langford Investment Co. | 83 |
| Langford Investment Co. Tr., P. P. Langford, Jr., V. Pres. | 1,391 |
| McMahon, J. L. | 12 |
| Murph, J. W. | 100 |
| Patterson, C. A. | 50 |

| By Proxy | No. Shares |
|---|---|
| (Voted by J. R. Chambers) | |
| Hardy, Mrs. D. M. | 33 |
| (Voted by C. B. Woods) | |
| Inland Investment Co. | 46 |
| (Voted by Rosco Staton) | |
| Mrs. C. B. Staton | 60 |
| Mrs. Rosco Staton | 20 |
| (Voted by Orville Bullington) | |
| R. E. Basham | 5 |
| Ray F. Bowmer | 10 |
| Farris, I. A. | 8 |
| Foster, F. A. | 3 |
| Humphrey, Leslie | 290 |
| Kell, Frank | 1,174 |
| Kemp Estate (J. A.) | 908 |
| Lasker, Loula | 367 |

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| | | | |
|---|---|---|---|
| Perkins, J. J. | 527 | Martin, N. H. | 139 |
| Robertson, W. L. | 448 | Snider, C. W. | 375 |
| Sartwell, Inv. Corp. Tr., J. L. McMahon, Pres. | 188 | Stewart, L. G. | 10 |
| Timberlake, F. P. | 110 | | |
| Vogtsberger, Wm. | 26 | | |
| Ward, J. C. | 30 | | |
| Womack, O. B. | 50 | | |
| Young, J. T. | 11 | | |
| Total | 4,839 | Total | 3,448 |
| (Proxy) | 3,448 | | |
| | 8,287 | Total Shares Represented. | |

The President made a report regarding the purchase of various assets by City National Bank in Wichita Falls of the City National Bank of Wichita Falls, and the assumption of deposit liability by that association, and after some discussion the following resolution, upon motion by Orville Bullington, seconded by J. L. McMahon, was passed unanimously:

"Resolved, That The City National Bank of Wichita Falls be placed in voluntary liquidation under the provisions of Sections 5220 and 5221 of the United States Revised Statutes, to take effect July 1, 1933, and that C. E. Basham be appointed liquidating agent or liquidation committee of said bank; that liquidation shall be conducted in accordance with law and under the supervision of the board of directors, who shall require a suitable bond to be given by the said agent or committee in an amount to be fixed by the board of directors; that the said liquidating agent or committee shall render
705 annual reports to the Comptroller of the Currency on the 31st of December each year showing the progress of said liquidation until said liquidation is completed; that said liquidating agent or committee shall render an annual report to the shareholders on the date fixed in the articles of association for said annual meeting, at which meeting the shareholders may, if they see fit, by a vote representing a majority of the entire stock of the bank, remove the liquidating agent or committee and appoint another in place thereof; that a special meeting of the shareholders may be called at any time in the same manner as if the bank continued an active bank, and at said meeting of the shareholders may, by a vote of the majority of the stock remove the liquidating agent or committee; that the Comptroller of the Currency is authorized to have an examination made at any time into the affairs of the liquidating bank until the claims of all creditors have been satisfied, and that the national bank examiner will be compensated for his time and expense in making the examination in question."

The President conducted a discussion of the contract entered into between The City National Bank of Wichita Falls, and City National Bank in Wichita Falls, as it appears on pages 140 to 148, inclusive, of the minute book of The City National Bank of Wichita Falls, and upon motion by G. B. Woods, seconded by J. W. Murph, action of the directors entering into the contract was approved unanimously.

706 There being no further business, upon motion by Mr. Perkins, seconded by Mr. Timberlake, the meeting was adjourned.

(S) W. L. ROBERTSON,
Vice President.
(S) JACK JEFFUS,
Ass't Secretary.

Minutes of the Meeting of the Board of Directors of The City National Bank of Wichita Falls held June 30, 1933.

A meeting of the Board of Directors of The City National Bank of Wichita Falls convened on the above date directly after adjournment by the stockholders, with the following present:

Basham, C. E.
Cullum, L. H.
Harrell, J. T.
Harvey, R. O.
Jeffus, Jack
Jones, Oral
Kell, Joe
McMahon, J. L.
707 Perkins, J. J.
Robertson, W. L.
Timberlake, F. P.

Upon motion by Mr. Timberlake, seconded by Mr. Cullum, the following resolution was passed unanimously:

"Whereas, after due and legal notice, the stockholders of this association owning two-thirds of capital stock have voted to place the association in voluntary liquidation, and

"Whereas, this vote has been duly certified to the Comptroller of the Currency, and

"Whereas, under the provisions of section 5 of the act approved December 23, 1913, and known as the Federal Reserve Act, this association is required to surrender for cancellation all of its holdings of the capital stock of the Federal Reserve Bank of Dallas, and to terminate its membership in said bank,

"Now, Therefore, Be It Resolved, that—C. E. Basham—the duly elected Liquidating Agent, be, and he is hereby authorized, empowered, and directed to apply to the said Federal Reserve Bank for the cancellation of 600 shares of stock alloted to and held by this association, and to receive and receipt for any balance due this association by said Federal Reserve Bank on account of cash and paid subscriptions, or otherwise, and any securities or other valuables belonging to this association, and to
708 do such acts as may be necessary to adjust and settle the accounts between this association and the said Federal Reserve Bank."

There being no further business to appear, the meeting adjourned.

(S.) J. T. HARRELL,
(S.) JACK JEFFUS.

Mr. Humphrey:

In that connection, I offer in evidence the minutes of the Board of Directors, of March 25, 1933, page 149, of the

Minute Book, wherein C. E. Basham, was appointed by the directors as liquidating agent.

(Said instrument marked "Plaintiff's Exhibit No. 46" and reading as follows:)

PLAINTIFF'S EXHIBIT 46.

Minutes of the Meeting of the Board of Directors of The City National Bank of Wichita Falls held March 25, 1933.

A meeting of the Board of Directors convened on the above date, with the following members present:

Cullum, L. H.
Harrell, J. T.
709 Humphrey, Leslie
Jeffus, Jack
Jones, Oral
Kell, Frank
Kell, Joe
Perkins, J. J.
Snider, C. W.

Upon motion by Mr. Harrell, seconded by Mr. Humphrey, and carried, the following committee:

Cullum, L. H.
Kell, Joe
Snider, C. W.
Timberlake, F. P.

was designated to inaugurate proceedings for the voluntary liquidation of the affairs of The City National

Bank of Wichita Falls, and that C. E. Basham be appointed Liquidating Agent.

Motion was duly made and seconded that the meeting be adjourned.

(S.) J. T. HARRELL,
President.
(S.) JACK JEFFUS,
Ass't Secretary.

The Witness:

There had been some action by the Board of Directors prior to March 25, at the time that resolution was adopted with respect to the liquidation of the bank. The date of that is March 15.

710 Mr. Rogers:

We offer in evidence the minutes of the meeting.

(Marked "Defendant's Exhibit 23" and reading as follows:)

DEFENDANT'S EXHIBIT 23.

Minutes of the Meeting of the Board of Directors of The City National Bank of Wichita Falls held March 15, 1933.

At a special meeting of the Board of Directors of The City National Bank of Wichita Falls, Texas, held March 15, A. D. 1933, there were present the following directors:

Cullum, L. H.
Harrell, J. T.
Humphrey, Leslie
Jeffus, Jack
Jones, Oral

711 Kell, Frank
Kell, Joe
Perkins, J. J.
Snider, C. W.

The following proceedings were had, to-wit:

The President, J. T. Harrell, after submitting the report of the recent examination, explained to the Board that the capital stock of The City National Bank of Wichita Falls had become seriously impaired and that it was doubtful whether or not the Secretary of the Treasury and the Comptroller of the Currency would give their consent to the reopening of the bank for business at 9:00 o'clock, A. M., March 15, 1933. The President said that he thought it would be absolutely essential to the welfare of the depositors that the deposit liability of the bank be taken care of in some way, so that the depositors would be absolutely protected and that there would be no lessening of confidence in the banks of Wichita Falls. The President further stated that it was absolutely impracticable to pursue the remedy of assessing stockholders of the bank in order to make good the impairment, and that confidence would be seriously impaired, if not destroyed, if the bank failed to reopen for business at 9:00 o'clock A. M., on the morning of March 15th, 1933. The President stated that—in his opinion—there was only one thing that could be done, and that would be to get some other bank to assume the deposit liabilities, and such other liabilities as said bank could be induced to assume, and that he thought it would be necessary
712 for the bank to do this, and that it would also be necessary for The City National Bank of Wichita Falls to go into voluntary liquidation. The President stated that at the suggestion of the Chief Bank Examiner, Mr. Collier, and his assistant for this district, Mr. Gilbert, that certain of the shareholders of The City National Bank of Wichita Falls had made application to the comptroller of the Currency, as provided by law, for the or-

ganization of a new National Bank in Wichita Falls, Texas, to be known as "City National Bank in Wichita Falls." The President stated that the Comptroller had given his assent to the organization of the new bank, and that it was authorized to open for business at 9:00 o'clock A. M., on March 15, 1933; that its capital stock had been fully paid in in the sum of Four Hundred Thousand ($400,000.00) Dollars and that the directors had stated that if a satisfactory contract could be agreed upon that the new bank would assume the depositors' liability and certain other liabilities of "The City National Bank of Wichita Falls."

Whereupon, upon motion being duly made by Leslie Humphrey, and seconded by L. H. Cullum, the following resolution was unanimously adopted, to-wit:

"Be It Resolved by the Board of Directors of "The City National Bank of Wichita Falls" that this Association as early as practicable commence proceedings for the voluntary liquidation of this association, under the provisions of the Revised Statutes of the United States providing for the voluntary liquidation of National Banking Associations.

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"Be It Also Resolved that the officers of this Association be vested with full and complete authority to execute a contract providing for the sale and transfer of a sufficient amount of the assets of this Association, including cash on hand, necessary to induce the "City National Bank in Wichita Falls", a National Banking Association, authorized to do business in the City of Wichita Falls, Texas, to assume the liabilities due to the depositors of The City National Bank of Wichita Falls, and such other and further liabilities of this Association as the said "City National Bank in Wichita Falls" can be induced to assume.

"Be It Further Resolved that the officers of this Association are authorized and empowered to pledge all of the assets of this Association, if, in their discretion, they think best, for the purpose of inducing the said "City National Bank in Wichita Falls" to assume the liabilities above mentioned, of this Association.

"Be It Further Resolved that the officers of this Association are authorized and empowered to make such guarantees and warranties as to the value of the assets of this Association as they may find necessary and proper, and as they may in their discretion think best, they being authorized and empowered to bind this Association and its shareholders in any manner, which, in their discretion, they may think best in order to induce the
714 said "City National Bank in Wichita Falls" to assume the liabilities of this Association to its depositors, and such other liabilities as the officers of this Association can induce the said "City National Bank in Wichita Falls" to assume, it being our purpose and intent to grant unto the officers of this Association full power and authority to make such contract for this Association with the said "City National Bank in Wichita Falls" as the officers of this Association may think best and proper, in order to effectuate the purposes in mind, to-wit, the full protection of the depositors of this Association from any loss whatever."

"Upon motion duly made and seconded, the meeting was adjourned.

(S.) J. T. HARRELL,
President.
(S.) JACK JEFFUS,
Ass't Secretary.

The Witness:
I don't think there are any other actions shown by the minutes of the Board of Directors, with respect to the liquidation of the old bank, other than those that have been offered in evidence.

Mr. Deaton is now the liquidating agent of the plaintiff bank, being appointed after Mr. Basham resigned. Mr. J. T. Harrell is still the trustee named in the contract.

As to the moneys that were borrowed, and the cash in the old bank thereby increased, I will start with April 8, 1931, and give a history of the thing, on that day, for
$150,000.00 from the Forth Worth National Bank
715 of Fort Worth. These are all evidenced by notes executed by that bank as principal. On May 7, 1931, borrowed $150,000.00 from the Guaranty Trust Company of New York. That made a total of bills payable, $300,000.00. On June 22, 1931 paid the Fort Worth National Bank $50,000.00. That cut the bills payable down to $250,000.00. On June 25, 1931, reduced the note of the Guaranty Trust Company to $124,364.20, making a total bills payable of $224,364.20. On June 29, 1931, paid those obligations off. They did not owe any bills payable. On July 25, 1931, borrowed $100,000.00 from the Guaranty Trust Company. On July 31, 1931, borrowed $175,000.00 from the National City Bank of New York, and approximately the same day they paid this $100,000.00 to the Guaranty Trust Company; that left the bills payable owing $175,000.00. On August 31, 1931, borrowed $30,000.00 from the Fort Worth National Bank, making a total bills payable $205,000.00. On September 14, 1931, reduced the bills payable to the National City Bank, to $154,006.00, and borrowed $200,000.00 from the First National Bank of St. Louis, Missouri, making a grand total of bills payable at this time, $384,006.00. On October 10, 1931, reduced the bills payable at the Fort Worth National Bank to $20,000.00 reducing the bills payable at the National City Bank New York $118,076.03. Reduced bills payable First National Bank of St. Louis, Missouri, to $142,916.71. Borrowed $150,000.00 from the First National Bank of Wichita Falls, and borrowed $100,000.00 from the First National Bank in Dallas, making a grand total
716 of bills payable $530,992.74. On October 13, 1931, borrowed $460,000.00 from the Federal Reserve

Bank, making a grand total of bills payable, $990,992.74. On or about October 16, 1931, they paid the Fort Worth National Bank's note off. They reduced the National City Bank of New York to $117,843.68. Reduced First National Bank of St. Louis, Missouri to $129,890.04, and the Federal Reserve Bank of Dallas note had been reduced to $465,028.63, making a grand total of bills payable $952,-762.36. On October 30, 1931, the National City Bank of New York note was reduced to $88,000.00. First National Bank of St. Louis note had been reduced to $120,-906.07. Federal Reserve Bank of Dallas, had been increased to $469,000.00, making a grand total of $927,906.07. On December 31, 1931, the note at the National City Bank of New York had been reduced to $79,221.49. First National Bank of Dallas had been reduced to $108,576.90. First National Bank of Wichita Falls note had been reduced to $60,000.00. Federal Reserve Bank of Dallas had been reduced to $110,000.00, making a grand total of $747,798.39. On March 31, 1932, the note of the National City Bank of New York had been reduced to $45,615.33. First National Bank of St. Louis, Missouri had been reduced to $77,481.16. Federal Reserve Bank of Dallas had been reduced to $396,000.00, making the amount payable $669,096.49. On April 8, 1932, borrowed $327,325.75, from the Reconstruction Finance Corporation, making a grand total of Bills payable, $996,422.24. On April 13, 1932, National City Bank of New York note had been reduced to $20,615.33. First National Bank of St. Louis, Missouri, had been reduced to $55,184.49. First National Bank of Wichita Falls, had been increased to $125,000.00. Federal Reserve Bank at Dallas note had been reduced to $363,500.00. Note to the Reconstruction Finance Corporation had been reduced $325,421.42, making a grand total of $898,721.24. On April 4, 1932, note of the National City Bank of New York, had been reduced to $12,394.00. Note of the First National Bank of St. Louis, Missouri had been reduced to $45,484.49. Note of the Federal Reserve Bank in Dallas, reduced to $260,000.00. Note of Re-

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construction Finance Corporation of Dallas, Texas, had been increased to $624,990.03, making a total of bills payable of $1,167,868.62. On May 31, 1932, the note of the National City Bank of New York had been paid. Note of the First National Bank of St. Louis, Missouri, had been reduced to $26,668.29. Note of the Federal Reserve Bank at Dallas, reduced to $263,446.67. Note of the Reconstruction Finance Corporation had been reduced to $601,822.99, making a grand total of $1,106,927.95. On October 31, 1932, note of the First National Bank of St. Louis, Missouri, had been reduced to $5,000.62. Note of the First National Bank of this City, reduced to $114,999.12. Note of the First National Bank, Dallas, Texas, reduced to $88,178.83. Note of the Federal Reserve Bank at Dallas, had been reduced to $272,500.00. Note of the Reconstruction Finance Corporation, Dallas, had been reduced
718 to $515,911.22, making a grand total of $996,589.79. In November 19, 1932, note of the First National Bank, Wichita Falls, had been reduced to $110,000.00. Note of the First National Bank of Dallas, had been reduced to $78,000.01. Note of the Federal Reserve Bank, Dallas, had been increased $570,723.06. Reconstruction Finance Corporation's note had been reduced to $493,389.53, making a grand total of $1,257,113.22. On December 31, 1932, note of the First National Bank, St. Louis, Missouri, had been paid off. Note of the First National Bank of Wichita Falls was $100,076.61. Those notes had been reduced to $50,000.00 and had been increased back up to $125,000.00, and these different items that I have testified to were payments on those notes. Note of the First National Bank in Dallas, $55,000.00. Note of the Federal Reserve Bank in Dallas, $516,000.00. Note of the Reconstruction Finance Corporation, $462,116.04, made a total of bills receivable of $1,133,192.65. On February 21, 1933, note of Federal Reserve Bank in Dallas, had been reduced to $367,000.00. Note of the Reconstruction Finance Corporation had been increased to $673,441.48, making a grand total of bills payable of $1,195,441.48. On March 14, 1933, First National Bank, Wichita Falls, $100,-

000.00—that is a renewal of former indebtedness. First National Bank in Dallas, $55,000.00. Federal Reserve Bank in Dallas, $286,500.00. Reconstruction Finance Corporation, $669,641.84, making a grand total of $1,211,-141.84. I have given you a history of the record of the repurchase agreement, which brings the trans-
719 action down to March 15, 1933, the organization of the new bank.

When I used the term "repurchase agreements," I mean that that is the notes of the City National Bank of Wichita Falls, that sold to other banks or individuals as it might be, with a re-purchase agreement, an agreement to repurchase these notes from the parties sold to at a given date.

I will give a history of the transactions classified as repurchase agreements, beginning at the same time and covering the same period.

December 23, 1930, that was a repurchase agreement with the First National Bank in Dallas, $461,679.11. The re-purchase agreement was between the First National Bank of Dallas, and the directors of the City National Bank of Wichita Falls. I have it here.

Mr. Rogers:

We offer the instrument in evidence.

(Marked "Defendant's Exhibit 24" as follows:)

DEFENDANT'S EXHIBIT 24.

Wichita Falls, Texas, December 23rd, 1930.

This Agreement between Frank Kell, C. W. Snider, J. J. Perkins, J. T. Harrell, W. L. Robertson, C. E. Basham, parties of the first Part and the First National Bank in Dallas, Texas, Party of the second part.

Witnesseth:

That the Parties of the First Part have this day sold and do hereby sell and deliver to the Party of the Second Part for the consideration of $461,679.11, the following described County and School warrants and Cotton-Secured acceptances, to-wit:

| | |
|---|---|
| Wichita County School warrants ..... | $ 38,174.05 |
| Wichita County Warrants ..... | 45,304.43 |
| City of Wichita Falls, Warrants ..... | 24,999.67 |
| Wichita Falls Independent School Warrant... | 203,300.90 |

720 R. O. Harvey & Co. Inc. Trade Acceptances secured by 3579 bales cotton. Warehouse receipts for cotton held by Hutchings-Sealy National Bank, Galveston, Texas.

Parties of the First Part hereby agree to re-purchase on or before thirty (30) Days from this date and the Party of the Second Part agrees to sell all of the above described County and School warrants and Acceptances for the consideration of the said $461,679.11 together with interest at the rate of five (5) percent on said amount from this date until the date of repurchase.

Parties of the First Part:

JACK KELL,
C. W. SNIDER,
N. H. MARTIN,
J. T. HARRELL,
J. J. PERKINS,
C. E. BASHAM.

(The word Canceled is run through all these signatures).

Party of the Second Part:

FIRST NATIONAL BANK IN DALLAS, Dallas, Texas.
By NATHAN ADAMS,
President.

(On the Reverse Side thereof): Jan. 5, 1931, Repurchased City of Wichita Falls Warrants 24999.67.

Accured interest on Wichita Falls Warrants Pd. (41.67).

Jan. 23, 1931, Repurchased Wichita County Warrants 9291.94.

Interest to 1/23/31 on County Warrants repurchased Pd. (40.00).

721 Jan. 23, 1931, All interest paid to this date.

Jan. 27, 1931, Repurchased Clara Ind. School Dist. War. 1575.67*.

Jan. 27, 1931, Int. paid to date on repurchase War. 88c.

*Posted in new agreement.

NJ.

The Witness:

The amount of money obtained there went direct to the credit of the bank, that is, City National Bank of Wichita Falls; the nat various times, on this repurchase agreement and as those would become due, those warrants would be paid, as those warrants were paid they would pay that amount of money to the First National Bank in Dallas, and they would credit it on this obligation. There were renewals from time to time of these repurchase agreements. I will state what happened. On December 23, 1930, this $461,679.11 worth of warrants, and trade acceptances that the City National Bank of Wichita Falls owed, sold them to the First National Bank in Dallas and got the money on them. That was property of The City National Bank of Wichita Falls, Wichita County warrants, totaling $13,174.05, and the other property described in the contract. That was owned by the City National Bank of Wichita Falls, and they sold these to

the First National Bank in Dallas for this amount of money. The bank did not sign that instrument, these individuals that signed this instrument agreed to repurchase from the First National Bank in Dallas, these items. The balance that was due at a certain date, there was a new agreement signed for the balance then existing
722 on it. And the balance had been paid off before March, 1933. The next re-purchase agreement was with the First National Bank of St. Louis, Missouri, on March 30, 1931, and that was for $300,988.30. That particular item was liquidated somewhere in July, 1931. Then there was a re-purchase agreement on June 17, 1931, with the Fidelity National Bank of Kansas City, Missouri, of $162,466.68, and that was liquidated About December 29, 1931. The next repurchase agreement was with the First National Bank of Wichita Falls—that is wrong, on December 29, 1931, the City National Bank of Wichita Falls sold to various directors of the City National Bank, the individuals, I don't remember right off hand, notes totaling $100,000.00. This group of men borrowed from the First National Bank of Wichita Falls, this $100,000.00 with which to buy these notes, and these notes became due, they were paid by the money that was collected from the proceeds of these notes, was paid to the First National Bank of Wichita Falls, to liquidate the notes. The total outstanding of $27,895.00, March 14, 1933, was paid. I do not know what notes were sold to the directors or individuals by the City National Bank in payment of which such purchasing directors or individuals paid this $100,000.00. I do not have that agreement, or rather, have not located it, and in order to find out, we would have to go through all of the ledger sheets of the liability ledger, both active and closed, which would be a tremendous task. They were notes receivable—I did not handle that transaction. All I can testify to is from the re-
723 cord. I can tell you the total notes receivable as of December 28, 1931; I have here some three or four more repurchase agreements with the First National Bank of Wichita Falls, I have one dated September

23, 1932, for $10,000.81, and I have one dated October 27, 1932, for $4,999.12. Then I have one here dated November 17, 1932, for $9,923.39, which was a renewal of some of these others, and the last one here is dated January 16, 1923, for $6,873.50, which is a renewal of the one dated November 17, 1932. That was finally paid off on February 16, 1933. Under each of these repurchase agreements, last testified to, the assets of the City National Bank of Wichita Falls, belonging to that bank, were delivered to the First National Bank, under the terms of the instruments. The proceeds of those two agreements, and the amounts shown by them, except the renewals, of course, in cash, were deposited to the account of the City National Bank of Wichita Falls.

I have other original instruments between either the directors or stockholders of the City National Bank and the City National Bank of Wichita Falls, or First National Bank of Wichita Falls, concerning this $100,000.00 item which some of the directors of the bank borrowed from the First National Bank and deposited to the account of the City National Bank. I have here a note dated December 29, 1931, due sixty days after date, payable to the order of the First National Bank of Wichita Falls, in the sum of $50,000.00. This note is signed by

724 C. H. Clark, J. T. Harrell, W. L. Robertson, J. Anderson Kemp, C. E. Basham, A. H. Britain, R. O. Harvey, Oral Jones, F. T. Timberlake, Frank Kell, N. H. Martin, Leslie Humphrey, J. J. Perkins, J. L. McMahon, C. W. Snider, L. H. Cullum; I also have another note in the same amount due the same day and signed by the same parties for $100,000.00. These two notes were paid on March 5, 1932. Then I have a note dated April 6, 1932, for $25,000.00 due ninety days after date, payable to the order of First National Bank of Wichita Falls, and this note is signed by Orville Bullington, C. W. Snider, J. Anderson Kemp, C. H. Clark, A. H. Britain, Leslie Humphrey, J. T. Harrell, W. L. Robertson, C. E. Basham, The Langford Investment Company trustee, by P. P. Langford, President, L. H. Cullum, F. T. Timber-

lake, Oral Jones, Frank Kell, R. O. Harvey, N. H. Martin, J. L. McMahon, and J. J. Perkins. This note was renewed on July 5, 1932, for the same amount and the same signor. Renewed again on September 3, 1932, for $25,000.00. On November 2, 1932, for $25,000.00. Renewed again on January 31, 1933, for $25,000.00. That was the amount that was outstanding on it at the time, March 4, 1933, $25,000.00. That note was paid May 15, 1933, I have not determined just how it was paid, it was either paid out of the collection of these notes, or those notes were bought back in by the bank and paid for by the bank, it was not paid with the assets of the bank, because the bank did not own them. These men owned those assets at that time. They had purchased them from the bank and they owned them, that is, the individual directors, to whom they had been delivered, at the time the sixty day note was made. I do not know the terms, and do not have the repurchase agreement on that item.

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Re-Direct Examination.

By Mr. Humphrey:

I am not a director of the bank, and did not sign any of these notes, and am not familiar with this matter, other than as disclosed by the records; Mr. Harrell is a party to each of them, and he is present and he knows the details.

J. T. HARRELL, recalled, examined in chief by Mr. Rogers, testified as follows:

I will answer the question as asked to Mr. Carson; in this particular item Mr. Carson has been testifying about, with the First National Bank of this city, wherein the directors of the City National Bank and a number of the stockholders, signed an obligation which was originally for $100,000.00 on the date those funds, proceeds of that obligation was received, by the City National Bank, a

like amount of notes was sold to these individuals, who executed this obligation. The note was either liquidated out of the collections of those particular notes, or repurchased from these individuals, of the identical items,
726 by the City National Bank. I do not remember, independently, and do not have available to refresh my memory, just how much of these items were paid as the proceeds of collections of the items sold and/or paid out of other assets of the bank—I do not know what amount was paid, or how much was paid for it.

This whole transaction on these re-purchase agreements, wherein the director signed what was known as the repurchase agreement, was the lending of the credit of the individuals, really, for the benefit of the bank. I might say this, that this term, "repurchase agreement" might not express the fact, but because the contract was not between the two banks, it was an actual sale, so far as the City National Bank was concerned, of these particular assets, and there was no legal obligation on them to repurchase those items. But the individuals who were interested in the bank loaned their credit to strengthen those items, so that the re-purchasing bank would accept them. The bank would have some assets of their own, which with the added security of personal obligation of certain individuals or directors, would enable the obtaining from the Dallas bank of a sum of money. The agreement between the records and the bank is reflected in these agreements, no entries on the bank records at all. When we reduced, for example, the notes receivable of the bank by $100,000.00, at a time when we surrendered those notes receivable to the directors of repurchase agreements, we frequently itemized those items—we
727 would have to refer to the records of this particular item. Our records would not necessarily reflect to whom they were transferred; there would be no written memorandum or book entry, than the reduction of the notes receivable and the increase of the cash on deposit; that is what you will find in all of these items, that the assets went down on one side and

the cash went up on the other. In other words, if anything were to happen to the bank in the interim, and the directors would have to redeem those notes, those assets would have belonged to the directors, because the bank got the money, and the directors obligated themselves to purchase. We do not keep a separate record as to the collection of these items that had been sold. My testimony is this, that the note was paid back, either out of the proceeds of the collection of the items sold to the directors, or repurchased from the directors by the City National Bank, of these identical items sold. If a collection came in on an item we did not have, we would find where that item has been disposed of. I think we can get some record on it. The books will reflect that the notes went down $100,000.00 and the cash went up $100,000.00 on the day the transaction with the First National Bank was had. We will try and have that information for you tomorrow.

728 H. H. CARSON, recalled, examined in chief by Mr. Rogers, testified as follows:

I have the reports to the Compotroller that you asked for, the one of December, 1929, and prior to it, October 4, 1929.

Mr. Rogers:
We offer it in evidence.

(Marked "Defendant's Exhibit 25" as follows:)

SCHEDULE A—LOANS AND DISCOUNTS (including overdrafts)

| | Amount |
|---|---|
| 1. Acceptances of other banks purchased by United States owned by this bank | |
| 2. Notes, bills, acceptances, and other indebtedness representing loans secured by foreign obligations | |
| 3. Commercial paper bought in open market | |
| 4. Loans to banks and trust companies | |
| 5. Loans secured by U. S. Government and other securities (including all loans to banks): | |
| (a) To brokers and dealers in securities in New York City | |
| (b) To brokers and dealers in securities outside New York City | |
| (c) To others | |
| 6. Real estate loans, mortgages, deeds of trust, and other liens on real estate: | |
| (a) On farm land | |
| (b) On other real estate | |
| 7. All other loans (including loans to purchase or carry securities) | |
| Total loans and discounts (must agree with item 1 of "Resources") | |

MEMORANDA:

1. Loans secured by U. S. Government obligations (included in item 5 above)
2. Total loans eligible for rediscount with Federal Reserve Bank (item 7 (b) and 7 (c) above)

SCHEDULE B—UNITED STATES GOVERNMENT SECURITIES OWNED (including amounts sold under repurchase agreement)

| | Par value | Book value | Market value |
|---|---|---|---|
| 1. Bonds (including bonds deposited to secure circulation) | | | |
| 2. Treasury notes | | | |
| 3. Certificates of indebtedness | | | |
| 4. All other | | | |
| Total U. S. Government Securities Owned (must agree with item 2 of "Resources") | | | |

SCHEDULE C—OTHER BONDS, STOCKS, AND SECURITIES OWNED (including amounts sold under repurchase agreement)

| | Par value | Book value | Market value |
|---|---|---|---|
| 1. Domestic securities: | | | |
| (a) State, county, and municipal bonds | | | |
| (b) Railroad bonds | | | |
| (c) Other public service corporation bonds | | | |
| (d) All other bonds | | | |
| (e) Stock of Federal Reserve Bank | | | |
| (f) Stock of other corporations | | | |
| (g) Collateral trust and other corporation notes | | | |
| (h) Municipal warrants | | | |
| (i) All other, including claims, judgments, etc. | | | |
| 2. Foreign securities: | | | |
| (a) Government bonds | | | |
| (b) Other foreign securities, including bonds of municipalities, etc. | | | |
| Total Other Bonds, Stocks, and Securities Owned (must agree with item 4 of "Resources") | | | |

SCHEDULE H—BILLS PAYABLE AND REDISCOUNTS

| | Amount |
|---|---|
| **BILLS PAYABLE** | |
| 1. Advances received on this bank's own promissory note: | |
| (a) From Federal Reserve Bank | |
| (b) From other banks and trust companies | |
| 2. Certificates of deposit issued to other banks and trust companies for money borrowed | |
| 3. Advances received on other instruments given for the purpose of borrowing money | |
| **REDISCOUNTS** | |
| 4. Notes and bills rediscounted, including notes and bills sold under repurchase agreement or with recourse to this bank: | |
| (a) With Federal Reserve Bank | |
| (b) With other banks, trust companies, etc. | |
| Total Bills Payable and Rediscounts (must agree with item 28 of "Liabilities") | |

(3)

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## SCHEDULE A—NAMES OF OFFICERS AND DIRECTORS; LIABILITIES, IF ANY, AND SHARES OWNED

Par value of stock, per share, $ 100.00 (Enter the names of all officers and directors, whether or not they are included in both)

Number of shares of stock issued 10,000

| 1 Names of officers and directors | 2 Official title | 3 If citizen of place to which there is to change by "C" | 4 Liability (individual or firm) on stock as indorser | 5 Liability (individual or firm) as indorser or guarantor of obligations | 6 Claims and suits pending | 7 Overdrafts | 8 Number of shares of stock owned (directors' shares) |
|---|---|---|---|---|---|---|---|
| J. A. Kemp | Chm.Board | D | $ 76 894 26 | $229 819 10 | $ None | $ None | 877 |
| A. T. Harrell | President | D | 99 183 35 | 22 860 50 | None | None | 569 |
| W. L. Robertson | Vice Pres. | D | 4 800 00 | 3 771 36 | None | None | 448 |
| C. E. Peeler | do | D | 20 800 00 | 96 062 50 | None | None | 135 |
| Oral Jones | V.P.-Cash. | D | 5 060 27 | 4 000 00 | None | None | 200 |
| W. S. Abbott | Asst.Cash. | | 4 887 [illegible] | 2 040 00 | None | None | 10 |
| R. E. Peeler | do | | None | None | None | None | 1 |
| J. L. Jewell | do | | None | None | None | None | 25 |
| E. S. Davis | Auditor | | 377 52 | None | None | None | 98 |
| A. E. Britain | Director | | 20 401 25 | 4 [illegible] 00 | None | None | 97 |
| C. E. Clark | do | | 46 363 93 | 77 302 23 | None | None | 173 |
| L. E. Callum | do | | 19 830 00 | None | None | None | 140 |
| E. F. Duncan | do | | None | None | None | None | 67 |
| R. S. Harvey | do | | 50 312 50 | 3 074 15 | None | None | 240 |
| Joella Humphrey | do | | 12 561 15 | 27 008 50 | None | None | 240 |
| W. P. Davis | do | | None | 148 246 25 | None | None | 139 |
| J. L. Hampton | do | | None | None | None | None | 200 |
| J. A. Perkins | do | | 20 533 33 | 72 422 81 | None | None | 527 |
| C. W. Butler | do | | 50 000 00 | 7 074 15 | None | None | 376 |
| E. P. Timberlake | do | | 33 129 24 | 4 000 00 | None | None | 330 |
| TOTAL | | | 444 382 09 | 697 907 50 | None | None | 4608 |

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## SCHEDULE B—LOANS EXCEEDING THE LIMIT PRESCRIBED BY SECTION 5200 OF THE REVISED STATUTES

Renewed commercial paper and overdrafts must be considered as loans in arriving at a borrower's total liability; also balances due from nonmember banks exceeding 10 per cent of this bank's paid-up capital and surplus.

| NAME | FULL AMOUNT OF LOAN OR BALANCE |
|---|---|
| | $ |
| NONE | NONE |

## SCHEDULE C—CONTINGENT LIABILITIES
(Not included among Resources and Liabilities)

| | |
|---|---|
| 1. Commercial letters of credit issued, but not used | $ None |
| 2. Travelers' letters of credit issued under guaranty or deposit of security, but not used | None |
| 3. Other credits opened for customers, but not used | None |
| 4. Other contingent liabilities | None |
| TOTAL | None |

## SCHEDULE D—BRANCHES AND BRANCH OFFICES

| | Number |
|---|---|
| 1. Within corporate limits of head office city | None |
| 2. Elsewhere in United States | None |
| 3. In foreign countries | None |
| TOTAL | None |

733 The Witness:

That statement reflects $1,000,000.00 capital and $300,000.00 surplus, undivided net profits $285,690.76. I have the condensed statement before me as to the totals of the repurchase agreements from time to time, which I will give. On December 23, 1930, $461,679.11; On January 23, 1931, $277,487.50; March 24, 1931, $179,334.77; March 30, 1931, $480,323.07; June 16, $256,584.72; June 17, $381,807.16; July 15, $218,-174.64; July 16, 1931, $327,032.36; August 18, $184,-353.96; September 21, 1931, $183,615.98; December 29, 1931, $100,000.00; April 16, 1932, $25,000.00; September 23, 1932, $35,000.88; October 27, 1932, $42,000.00; November 17, 1932, $49,923.39; March 14, 1933, $27,895.00. That is the grand total of the repurchase agreements.

I have the records showing the condition of the bank from day to day since and including March 14, 1933, I will have those available tomorrow.

E. E. SCANNELL, a witness for the defendant, being first duly sworn, examined in chief by Mr. Rogers, testified as follows:

My name is E. E. Scannell, I am the present trustee of the Wichita Royalty Company. I came to
734 Wichita Falls in June, 1920, I first begun working for the Stone Printing Company, next for Ross Robertson, and then the Wichita Royalty Company, at which time Ross Robertson was trustee of that company. I became an employee of the Wichita Royalty Company in April, 1921. I was working on a salary at that time, I worked for that company up until I became trustee on the death of George Peckham, November, 1929, and since that time have been active as trustee. Mr. Peckham became trustee in the early part of 1923. At the beginning of Mr. Peckham's trusteeship, I looked after the business, in handling the details of the office, bookkeeping, etc, I was not an officer of the company. There

were no officers of the company except the sole trustee, I was classified as secretary and treasurer, but had no authority. Off and on I have owned a little stock in the Wichita Royalty Company, I did not own any stock in that company on January 1, 1926, and not until I became trustee. Prior to qualifying as trustee, I acquired one hundred shares at a par value of $1.00.

During Mr. Peckham's trusteeship, at first the office of the Wichita Royalty Company was in the Morgan Building, we gave that up and then moved to the City National Bank Building, then back to the Staley Building. Mr. Peckham maintained a private office near the Wichita Royalty Company. I wrote most of the checks against the deposit account of the Royalty Company, George Peckham and I each had authority to write checks. As a general rule the checks were written under the
735 direction of George Peckham, all checks were issued under his direction. Letters were sent out, under Mr. Peckham's trusteeship, sometimes regularly and sometimes periodically, and sometimes quite a ways apart to the stockholders. I could not tell you just how Mr. Peckham determined when a letter should be sent to the stockholders, he carried on the business and when he wanted to make a report to the shareholders, he did. He had no definite date to make such a report. He had approximately one thousand three hundred stockholders, all over the country and a few of them lived in Texas. I do not know of a single stockholder of the Wichita Royalty Company that lives now, or lived then, in the State of Texas. Some of them lived in foreign nations. I have a copy of most of the letters that were written to the stockholder by Mr. Peckham as trustee, during his trusteeship. Mr. Peckham supervised the preparation and release of those letters, I actually did the routine work.

Mr. Rogers:

We offer in evidence those letters.

(Marked "Defendant's Exhibit 26" as follows:)

736 DEFENDANT'S EXHIBIT 26.

Wichita Royalty Company,
406 Staley Building,
Wichita Falls, Texas.

To the Stockholders of Wichita Royalty Company:

We submit herewith a copy of our Balance Sheet showing the condition of our company at the close of the calendar year, December 31, 1925.

Since our report July 15th, we have made the following new purchases:

1-16 of the royalty in the South 32 acres in Block 21, Anderson Ranch lands, Archer County, Texas.

1-16 of the royalty in the South 60 acres of the West 80 acres of Block 22, Anderson Ranch lands, Archer County, Texas.

1-16 of the royalty in the North 25 acres of the East 50 acres of the West 100 acres of Block 19, Anderson ranch lands, Archer County, Texas.

1-16 of the royalty in the East 60 acres of the West 160 acres of Block 19, Anderson Ranch Lands, Archer County, Texas.

1-16 of the royalty in the North 40 acres of Block 21, Anderson Ranch Lands, Archer County, Texas.

737 1-4 of the royalty in the East 30 acres out of the D. Milligan Survey of the Mathis 2d Addition to the town of Cross Plains, Callahan County, Texas.

1-8 of the royalty in 320 acres out of Abstracts 1700 and 1701 of the E. Pankonin Survey, Kunkel Land, Young County, Texas.

1-8 of the land and royalty in 1070 acres M. L. Porter Land in Archer County, Texas. Cost $1250.00 cash and $2752.50 in equal payments due in 1, 2, and 3 years from date of purchase.

Our statements of July 15th showed $9,759.37 cash on hand at the close of the fiscal year, May 31, 1925. From June 1 to Dec. 31, 1925, we collected from all sources $32,446.07 making total cash available during period $42,205.44. The notes payable account $8,000.00 shown on our statement as of May 31st has been paid. During the period June 1 to December 31, 1925, our general expense including office rent, taxes and salaries, etc., was $5,455.57. During this period we paid out for the purchase of royalties, described above, $21,250.00 leaving us a cash balance on hand of $7,499.87 as shown by our statement.

There is a spirit of optimism prevailing throughout the oil industry that has not existed since 1920, and it is the consensus of opinion that 1926 will be one of the most prosperous years in the history of the oil industry. With the rapid decline of production throughout the United States and heavy increase in the price of crude oil throughout the year.

738

With the fulfillment of expectations for 1926, we naturally look for dividends and unless something unforeseen appears, believe that we will be in position to pay a dividend on April 15th, the amount to be determined at that time. If we do not have your correct mailing address please see that we have it, so that your checks and correspondence will reach you promptly.

Assuring you that we appreciate your co-operation and interest during the year 1925 and trust that the New Year will be a most profitable one, we are

Sincerely,

WICHITA ROYALTY COMPANY.

Balance Sheet, Wichita Royalty Company, Wichita Falls, Texas, at the Close of Business December 21, 1925.

Assets.

| | | |
|---|---|---|
| Cash on Deposit— | | |
| Security National Bank .. .... | $ 137.61 | |
| City National Bank ..... | 7,362.26 | 7,499.87 |
| Accounts Receivable— | | |
| Oil runs accrued but not yet paid for by pipe line companies, estimated ..... | | 3,016.31 |
| Producing Royalties Owned— | | |
| Cost plus appreciation per Engineer's Valuation Reports ..... | | 870,045.67 |
| Permanent— | | |
| Automobile, less depreciation.. | 810.00 | |
| Furniture and Fixtures, less depreciation ..... | 981.24 | 1,731.24 |
| | | $882,353.09 |

Balance Sheet, Wichita Royalty Company, Wichita Falls, Texas, at the Close of Business Dec. 31, 1925.

Liabilities.

| | | |
|---|---|---|
| Notes Payable— | | |
| For Royalties owned ..... | | $2,762.50 |
| Reserve for Depletion— | | |
| Per Company Books ..... | | 83,518.86 |
| Nominal— | | |
| Capital Stock Authorized.... | $1,000,000.00 | |
| Less Unissued ..... | 185,085.00 | 814,915.00 |
| Surplus— | | |
| Per Company Books December 31, 1925 (—) | | 18,843.27 |
| | | 882,353.09 |

740 Mr. Rogers:

Also the one of January 1, 1926, marked "Defendant's Exhibit No. 31," and reading as follows:

DEFENDANT'S EXHIBIT 31.

Balance Sheet, Wichita Royalty Company, Wichita Falls, Texas, at the Close of Business Dec. 31, 1925.

Assets.

| | | |
|---|---|---|
| Cash on Deposit— | | |
| Security National Bank .. .... | $ 137.61 | |
| City National Bank ..... | 7,362.26 | 7,499.87 |
| Accounts Receivable— | | |
| Oil runs accrued but not yet paid for by pipe line companies, estimated ..... | | 3,016.31 |
| Producing Royalties Owned— | | |
| Cost plus appreciation per Engineer's Valuation Reports ..... | | 870,045.67 |
| Permanent— | | |
| Automobile, less depreciation.. | 810.00 | |
| Furniture and Fixtures, less depreciation ..... | 981.24 | 1,791.24 |
| | | $882,353.09 |

Liabilities.

| | |
|---|---|
| Notes Payable— | |
| For Royalties owned ..... | $2,762.50 |
| Reserve for Depletion— | |
| Per Company Books ..... | 83,518.86 |

| | | |
|---|---|---|
| Nominal— | | |
| Capital Stock Authorized.... | $1,000,000.00 | |
| Less Unissued ..... | 185,085.00 | 814,915.00 |
| Surplus— | | |
| Per Company Books December 31, 1925 (—) | | 18,843.27 |
| | | 882,353.09 |

Wichita Royalty Company,
406 Staley Building,
Wichita Falls, Texas.

January 15, 1926.

To the Stockholders of Wichita Royalty Company:

We submit herewith a copy of our Balance Sheet showing the condition of our company at the close of the calendar year, December 31, 1925.

Since our report July 15th we have made the following new purchases:

742 1-16 of the royalty in the South 32 acres in Block 21, Anderson Ranch Lands, Archer County, Texas.

1-16 of the royalty in the South 60 acres of the West 80 acres of Block 22, Anderson ranch lands, Archer County, Texas.

1-16 of the royalty in the North 25 acres of the East 50 acres of the West 100 acres of Block 19, Anderson ranch lands, Archer County, Texas.

1-16 of the royalty in the East 60 acres of the West 160 acres of Block 19, Anderson Ranch Lands, Archer County, Texas.

1-16 of the royalty in the North 40 acres of Block 21, Anderson Ranch Lands, Archer County, Texas.

1-4 of the royalty in the East 30 acres out of the D. Milligan Survey of the Mathis 2d Addition to the town of Cross Plains, Callahan County, Texas.

1-8 of the royalty in 320 acres out of Abstracts 1700 and 1701 of the E. Pankonin Survey, Kunkel Land, Young County, Texas.

1-8 of the land and royalty in 1070 acres M. L. Porter Land in Archer County, Texas. Cost $1250.00 cash and $2762.50 in equal payments due in 1, 2, and 3 years from date of purchase.

Our statements of July 15th showed $9,759.37 cash on hand at the close of the fiscal year, May 31, 1925. From June 1 to Dec. 31, 1925, we collected from all sources $32,446.07 making total cash available during period $42,205.44. The Notes payable account $8,000.00 shown on our statement as of May 31st has been paid. During the period June 1 to December 31, 1925, our general
743 expense including office rent, taxes and salaries, etc., was $5,455.57. During this period we paid out for purchase of royalties, described above, $21,250.00, leaving us a cash balance on hand of $7,499.87 as shown by our statement.

There is a spirit of optimism prevailing throughout the oil industry that has not existed since 1920, and it is the consensus of opinion that 1926 will be one of the most prosperous years in the history of the oil industry. With the rapid decline of production throughout the United States and heavy increase in the demand for refined products, we look for a steady increase in the price of crude oil throughout the year.

With the fulfillment of expectations for 1926 we naturally look for dividends and unless something unforseen appears, believe that we will be in position to pay a dividend on April 15th, the amount to be determined at that time. If we do not have your correct mailing address

please see that we have it, so that your checks and correspondence will reach you promptly.

Assuring you that we appreciate your cooperation and interest during the year 1925 and trust that the New Year will be a most profitable one, we are

Sincerely,

WICHITA ROYALTY COMPANY.

744 Mr. Rogers:

Next offer in evidence from page 924 of the record on the other trial, instrument dated March 15, 1927.

DEFENDANT'S EXHIBIT 27.

Wichita Royalty Company,
509 Security National Bank Building,
Wichita Falls, Texas.

March 15, 1927.

To the Stockholders of Wichita Royalty Company:

Due to the rapidly increasing demand for oil products the industry has been taxed to keep the supply abreast of the demand, and consequently there have been periods of shortage in supply, when crude oil prices were high, and corresponding periods of over-supply, when crude prices were considerably less than the cost of production. The heavy demand for crude oil during the past two years has brought about a huge "wildcat" drilling campaign in every state, where oil possibilities exist in an effort to bring more oil to the surface. As a result, numbers of new fields have been opened up with large flush production, which has temporarily brought about an overproduction, and has forced crude oil prices to a low level. This means that where we have been receiving $2.00 to $2.50 for our oil, we will now receive from $1.10 to $1.40 until conditions aright themselves, which we hope will

not be long. At first thought a drop of seventy-five cents per barrel would apparently not make a great deal of difference, but when we take into consideration that it cuts off a third or a fourth of our monthly in-
745 come, it means a great deal, especially to Wichita Royalty Company whose development program is so definitely defined. The prime offender in this temporary over-production at present is the great Seminole field in Oklahoma, which is making more than 300,000 barrels of oil per day.

Since our last report a number of valuable properties have been acquired and new production has been developed both on and near some of our previous purchases greatly enhancing their value. Of the purchases listed in our last bulletin all now have production either on them or offsetting. The five royalty interests on the Anderson Ranch in Archer County, Texas, all have production, and we are receiving our proportionate part of the oil produced. An oil pool has recently been found on the 320 acres in the Pankonin Survey, Abstract 1701 in Young and Archer Counties, also Abstract 170, and we have already received more than 100% on our investment in this property.

The Oldham Pool has recently been opened up on the farm offsetting the Porter Ranch (1070) acres, in which we own an eighth in both the royalty and the land in fee. This pool will doubtless be extended onto the Porter Land within a very short time. Also the Hayter Royalty in Archer County which did not have production at the time of the purchase, is now producing.

We have always held out faith in the deep sand underlying our properties in Young County, Texas,
746 and recent developments in this section have uncovered this deep sand on the Stovall Land about a half mile northwest of our O. P. & G.-Graham royalty. From our property this well looks only a stone's throw, and we are confident that this sand also

underlies our property. The following article is quoted from the Wichita Daily Times, January 6, 1927:

"After flowing continuously for almost three weeks, the C. E. Stovall well on the Stovall land in south Young County is producing at the rate of 70 barrels of oil per hour, according to the latest reports reaching here Thursday morning.

"The well is the old Stovall No. 1 deepened to 3888 feet and completed on Christmas Day. Operators believe it to be the greatest discovery in this district in years.

"It is also reported that the Ruth Ada Oil Company has made a location on Block 31 to the east of the Stovall Well, E. C. Stovall is rigging up on his No. 5 300 feet north of No. 1 well, while the Panhandle Refining Company is preparing to deepen its No. 17 well to the Stovall pay. There are 18 new derricks or drilling wells in South Young County surrounding the Stovall land."

In Wilbarger County we have purchased 1/4 of the royalty out of the Stephens Land, described as follows:

747 North 20 acres of South 40 acres of North 60 acres of West half of Northeast Quarter Section 83, Block 14, H. & T. C. R. R. Survey, operated by Barkley & Meadows.

South 20 acres of South 40 acres of North 60 acres of West Half of Northeast Quarter Section 83, Block 14, H. & T. C. R. R. Survey, operated by Humble Oil & Refining Company.

Each of the above properties have ten wells. There are four producing sands in the south Vernon Field in Wilbarger County, which accounts for the large number of wells on these leases.

Probably the greatest contribution to the industry in the way of new producing territory during the past year was the development of the great fields in the Panhandle of Texas. Development there has added hundreds of square miles of prospective territory to the Mid-Continent field. A recent issue of the Oil & Gas Journal states: "In the Panhandle much is expected of the territory that includes the South Half of Moore County, the west edge of Hutchinson County, the north half of Potter County and the east half of Carson and Wheeler Counties." On well defined geological structures in the most promising areas of the Panhandle we have purchased a number of royalty properties. Around these recent developments have greatly increased their value, and some of them we believe are oil lands.

One of the most promising geological structures in the Panhandle is located in Southeastern Hartley County, and we have secured half of the royalty under
748 Section 54, of the Bravo Ranch Lands in Southeastern Hartley. A number of tests have been started in this district and a successful completion will mean much to Wichita Royalty Company.

Wheeler County is one of the newer producing areas of the Panhandle of Texas that is rapidly coming to the front as one of the leading fields of the Panhandle district. On the large geological structure in the Big Bend of the North Fork of the Red River, lying in between the producing fields in Eastern Wheeler and Western Gray Counties, we have purchased royalty interests in 1200 acres checkerboarded along this structure for 5 miles.

East 320 acres of Section 54, Block 24, H. & G. N. R. R. Co. Survey, lease owners, Murchison & Fain and the Humble Oil & Refining Company, jointly, and the Gulf Production Company.

Northeast 160 acres of Section 47, Block 24, H. & G. N. R. R. Co. Survey, lease owners, Murchison & Fain and the Humble Oil & Refining Company, jointly.

East 320 acres of Section 57, Block 24, H. & G. N. R. R. Co. Survey, lease owners, Texas Company.

North 320 acres of Section 45, Block 24, H. & G. N. R. R. Co. Survey, lease owners, Marland, Roxana and Tidal Oil Companies.

West 80 acres of the S. E. 1/4 of Section 43, Block 24, H. & G. N. R. R. Co. Survey, lease owner, Magnolia Petroleum Company.

749 Since we purchased our properties a number of wells have been brought in close to and in between our properties lying along this structure, probing up a large oil field, Section 55, where the Murchison & Fain-Humble No. 1 Binkley Caine was reported as an 800 barrel well, is offset on three sides with our properties. In the Northwest Quarter of Section 40, the Magnolia Petroleum Company brought in a well making a thousand barrels, and in Section 42 of the Gibson Oil Company has a well which made 85 barrels per hour a little more than 2000 barrels per day. A few wells of this size on our properties would soon build our income to a very substantial figure. This property is all under lease to the major companies and we look for a heavy development campaign along this structure when spring opens.

Across the river in Gray County in Extremely likely territory, where a number of wells have already been brought in a well making a thousand barrels, and in Section 42 the Gibson Oil Company has a well which made 85 barrels per hour or a little more than 2000 barrels per day. A few wells of this size on our properties would soon build our income to a very substantial figure. This property is all under lease to the major companies and we look for a heavy development campaign along this structure when spring opens.

Across the river in Gray County in extremely likely territory, where a number of wells have al-

750 ready been brought in we have secured royalty interests in the following properties:

South 320 acres of Section 61, Block 25, H. & G. N. R. R. Company Survey.

West half of S. E. 1-4 and N. E. 1-4 of the S. E. 1-4 of Section 59, Block 25, H. & G. N. R. R. Co. Survey.

Northwest quarter of Section 60, Block 25, H. & G. N. R. R. Co. Survey.

Production in the Panhandle seems to be analogous more or less with that of the Garber, Tonkawa and Burbank fields in Northern Oklahoma, and the opinion is pretty general that there is a possibility of a series of pools to be found between the Panhandle and these Oklahoma fields, and a great many tests are being drilled in the counties of Western Oklahoma in an attempt to pick up these series of pools. In very likely territory in Ellise County, Oklahoma, just a short distance over the Texas-Oklahoma line we have secured half the royalty and the lease on the S½ of N. E. ¼ of Section 35, Township 19N, Range 21w.

At no time in the history of the industry has prospecting for oil been carried on so extensively and at such a feverish pitch, with the result that many new pools and districts have been added to the production ranks during the past year. In West Texas alone, 8 new Counties were added to the producing column during 1926, opening a vast territory for prospecting. Many more new pools will be opened this year and next, bringing millions of dollars of New wealth to the industry. We believe that Wichita Royalty Company should have its probate portion and as long as we continue actively trading and buying in these fields we are confident we can make money for the company. From June 1st to December 31st we collected $36,435.30 and after paying our overhead expenses we have invested the balance in properties. It is our opinion that for the present all thought of dividends should be forgotten and that the income from our properties should be invested in additional properties to build up the book value of our stock, depleted as a result of what proved to be too large a dividend disbursement during the first three years of operation Wichita Royalty Company paid 36% annu-

751

ally in dividends and this excessive rate of dividend has seriously impaired the company's operations. Had Wichita Royalty Company paid a more conservative dividend during this period, and have reinvested its surplus in additional properties, it would have undoubtedly been an outstanding success. However by foregoing the small indefinite payments for a while, we are confident we can build this company back where it should be. It is going to take plenty of hard work on our part and patience on yours, but in the end we are confident it will be well worth the effort.

Sincerely,

WICHITA ROYALTY COMPANY.

752 Mr. Rogers:

Also from the record on the other trial, page 931, dated August 1, 1928.

DEFENDANT'S EXHIBIT 28.

Wichita Royalty Company,
1002 Staley Building,
Wichita Falls, Texas.

August 1, 1928.

To the Stockholders of Wichita Royalty Company:

When our bulletin was sent out March 15, 1927, the oil business was just beginning on the worst and most drastic period of depression in its history, a period that has continued well over a year and from which there seems no immediate relief. Quoting from an Editorial in the New York Times: "Today the industry is in a panic—Great Companies are writing losses in red ink, and independent operators face ruin."

Practically every Company both Major and Independent showed huge declines in their profits last year, while many of them sustained heavy losses, resulting in the passing of their dividends, notwithstanding the fact that they have been operating for years, and years and have had time to build up immense reserves. Out-

standing among these were Marland, Simms, Continental and Prairie, one of the oldest and largest so-called Standard Oil Units in operation in the Mid-Continent field.

Seminole has now dropped below 300,000 barrels from a peak of 527,400 barrels daily, or a little more than a fifth of the production of the entire
753 United States, which produces more than 70% of the Total World's Crude oil production. But to take its place or present even a greater menace to the price structure are the new fields of Crane, Upton, Crockett, Reagan, Winkler and Pecos Counties which according to gauges adopted for recent proration schedules could produce at the rate of 3,000,000 barrels a day if allowed unrestricted flow. While these fields for the most part produce low gravity oil, yet they have flooded the market with huge quantities of cheap oil from which we see no relief in the way of upward price revisions before late in the year.

These depressions will come in every line of business but it seems that for the past four or five years the oil business has had more than its share, and we feel that the time is not far off when some form of regulation will be put into force to prevent the great economic waste caused by competitive drilling under the present system of unrestricted development of new fields; in fact such a system was finally worked out in Seminole and is now being put into effect in the fields of southwest Texas; however in both places too late to save the industry from the most drastic period of depression in its history: but possibly in time to prevent a recurrence in the near future, and to help maintain a balance between supply and demand. This proration is a step in the right direction and through its adoption the problem of over-production has been solved and in
754 our opinion an era of continuous prosperity is in store for the oil business in the future.

Not only is there great loss to the producers in these flush fields who are compelled to sacrifice their oil at

most any price, but it hurts in greater proportion the producer in old settled fields where the flush production is already gone and the fields have settled down to the average pumper, the classification in which our properties come. True, we have no expense of operation of the wells and whatever production is received from the properties we get our proportionate part, yet at the same time each barrel of oil taken from the ground leaves just that many less to be taken out, and there is a great difference in the ultimate return from a property when the oil averages a $1.00 a barrel and when it averages $2.50 per barrel, although the ultimate number of recoverable barrels is the same.

Consequently in the face of these conditions we have not made the progress during the past year we had reason to expect, and furthermore the lack of operating capital has worked a great handicap upon our efforts. New financing would go a long way in speeding up the rebuilding and haste in the return of this Company have put $150,000,000 into enlargeing its various operation, and this is only one of the many larger operating companies of the Mid-Continent field. The oil industry is our second largest industry, an industry that has been developed almost within the present generation, and we as a small integral part of this
755 giant industry must keep pace with the expansion. Our sole income is from our many properties scattered throughout Oklahoma and Texas and to secure any working capital for expansion it is necessary for us to sacrifice all thought of dividends for the present and for this reason we have made no payments this year, and until conditions become normal in the industry, which we hope will not be long now, no dividend payments will be made.

Development in proven pools in the high gravity area has been practically at a standstill due to the low prices of crude. However a new pool has just been opened up on our royalty on the C. F. Kunkel Land Block 4, Abstract 1701 Young County. This block consists of 160

acres operated by the Prairie, and while only one well has as yet been completed, indications are that the pool will extend across the entire tract. This property along with the Dietrick, Abstract No. 1700, which has long since returned the cost of both pieces, was purchased in 1926 before production was found and were secured at a very cheap price. It also bears out our contention that every acre of land in Texas with oil possibilities will eventually be proven, and we need only to purchase the royalty and wait for development by the operating companies, in the meantime collecting our annual rentals and bonus money from sale of leases. It may be one year or ten, but it will come, and since the royalty right is perpetual and does not participate in the drilling or operating expense, only patience
756 is required after the original purchase is made.

When Wheeler County began to loom as a real factor in Panhandle production, the price of Wheeler County Crude was reduced to 75c per barrel which practically halted all new activity in the area. Wichita Royalty Company owns royalty interests in 1200 acres in Wheeler County checkerboarded over a five mile stretch along the North Fork of the Red River on a geological structure that has already yielded a number of pools from the granite wash, and on which we are confident a number of additional pools will be found with the probability all will eventually be joined. Piney Oil & Gas Company near the center of the northeast quarter of Sec. 44 has what appears to be an edge well and since we flank this tract on 3 sides in Section 43, 45 and 57, believe the return of normal conditions will bring about a number of operations on our properties, resulting in some nice production. We also own in Sections 47 and 54, which lie between the Fain McGaha production in Section 55 and the new fields in Gray County.

A number of new pools have been opened in Gray County within the past year, with wells ranging from two to five thousand barrels not uncommon. The Travis

well on the Back Section 44, Block 25 which was reported at 5,000 barrels lies about two miles southwest of our royalty in Sections 60 and 61. These tracts are under lease to Skelly Oil Company and the Empire Oil & Gas Company, two of the largest Independent producers of the Mid-Continent field and with the return of normal conditions believe we will get some development. We purchased this property on the basis of $30.00 an acre in 1926, and since a number of sales have been made nearby on a $100.00 base. However, should this property prove oil land our interests here would go a long way toward putting us back on a regular dividend basis. A royalty owner in this field recently sold his royalty for a million dollars and another is asking two million for his.

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The eyes of the Petroleum world are at present focused on West Texas where a most abnormal condition exists, and where it is said a barrel of oil can be purchased for 30c, but a barrel of water costs a dollar. Crane, Upton, Reagon and Winkler Counties are yielding a veritable flood of oil while Pecos County is startling the world with reports of 75 and 90 thousand barrel wells from the shallow depth of a thousand feet. This production is found in a barren desert waste which was considered of no value whatever, and from what is geologically termed the Permian basis, a folding which a few years ago geologists contended would never produce a drop of oil. On good geological structure in Pecos County we have secured a fourth of the royalty under 640 acres in Block No. 3. Survey No. 206 T. & P. R. Co. Survey under lease to the Pure Oil Company. With anything like a normal price for crude a huge wildcat drilling campaign will be started in Pecos County, and we hope to be able to acquire several properties on good geology. Wells of 50 and 75 thousand barrel calibre pay off rapidly, and a section of oil land here would yield an immense fortune.

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Sincerely,

WICHITA ROYALTY COMPANY.

Balance Sheet, Wichita Royalty Company, Wichita Falls, Texas, at the Close of Business May 31, 1928.

Assets.

| | | |
|---|---|---|
| Cash on Deposit— | | |
| Security National Bank | $ 80.67 | |
| City National Bank | 250.07 | $ 330.74 |
| Receivables— | | |
| Per Company Books | | 12,410.03 |
| Property Account— | | |
| Cost plus Appreciation per Valuation Reports. No allowance for Depletion | | 893,716.16 |
| Permanent— | | |
| Furniture and Fixtures, Less Depreciation | | 716.33 |
| | | $907,172.26 |

Balance Sheet, Wichita Royalty Company, Wichita Falls, Texas, at the Close of Business May 31, 1928.

Liabilities.

| | | |
|---|---|---|
| Notes Payable— | | |
| For Properties Purchased | | $49,095.68 |
| Reserve— | | |
| For Depletion of Royalties | | 513,350.79 |
| Nominal— | | |
| Capital Stock Authorized | $1,000,000.00 | |
| Less Unissued | 185,085.00 | 814,915.00 |
| Surplus— | | |
| Per Company Books May 31, 1928 (—) | | 470,198.21 |
| | | $907,172.26 |

Mr. Rogers:

Also on page 939 of the record of the former trial, as of May 31, 1929. Included in the letter is the balance sheets of the company also, which is introduced.

(Instruments marked "Defendant's Exhibit 29" and reading as follows):

760 DEFENDANT'S EXHIBIT 29.

Wichita Royalty Company,
1002 Staley Building,
Wichita Falls, Texas.

To the Stockholders of Wichita Royalty Company:

General business conditions in the United States so far this year have been reasonably good, many industries showing substantial gains. The oil industry has shown some improvements and the consumption of oil and gasoline has increased at a rapid rate. For the first five months' period this year, total demand for petroleum and all products was increased 248,000 barrels daily, or 11% over the same period of 1928. Total supply, which includes domestic production and imports for the same period has shown an increase of 13.5%. Total supply has exceeded total demand and storage has been increased, but due to the rapid rate of increase in consumption, the number of days' supply at the end of May this year amounted to 212 days, which compared with 221 days' supply on hand at the end of May, 1928.

Crude runs to stills in the Mid-Continent area for June where 585,030 barrels daily, for 565,800, August 555,250 and the estimate for September is 552,300 barrels daily. Even with unfavorable weather conditions prevailing in the Central States consumption of gasoline in the United States was 20% more in

761 May of this year than in the same month last year, and for the five months period the

increase has amounted to 16.3%. The estimated June rate of production and imports of petroleum exceed the demand by 4.6%. All of this surplus, however, was in California where large flush production was being developed, but this condition is expected to improve, when their new gas conservation law becomes effective. In fact the Santa Fe Springs field production from the 6,000 foot level has already shown a marked decline from its peak attained on July 20th.

The past three or four years have proven and developed many new ideas in the production of oil. Many of the old shallow fields are now producing from deeper strata. The Tonkawa field in Oklahoma, in which we have a number of properties developed eight sands ranging 1200 to 4000 feet. In Seminole, the Wilcox sand was found to produce more oil than was previously recovered from all of the shallow sands of the area, while the new Wilcox sand recently discovered on the edge of Oklahoma City below 6,000 feet gives indications of flooding the crude oil market and further reducing crude prices. In the heart of the Reagan pool in West Texas a well has been flowing more than 2,000 barrels per day for almost a year from a depth of 8,500 feet, and it is not unreasonable to expect that production in the next few years will be obtained from depths of ten thousand feet.

762 Most all of our properties are now producing from shallower sands and in a number of the areas in which these properties are located, it is firmly believed that deeper oil will be found than is now producing. Our royalty interests are perpetual and should deeper oil be found on them at some future date we shall participate in our proportionate part without expense to us.

Very little net profits have accrued from oil production the last year and a half, due to overproduction and consequent low prices. However, we are very confident that this crude situation will adjust itself at some future date, but just when this will be, no one can safely

predict. When this time comes our income should be materially larger and we hope to be in position to resume dividends.

Yours truly,
WICHITA ROYALTY COMPANY.

Balance Sheet, Wichita Royalty Company, Wichita Falls, Texas, at the Close of Business May 31, 1929.

Assets.

| | | |
|---|---|---|
| Cash in Banks— | | |
| City National Bank | $1,332.23 | |
| Security National Bank | 80.67 | $1,412.90 |
| Receivables— | | |
| For Sale of Oil | | 897.17 |
| Permanent— | | |
| Furniture and Fixtures, less Depreciation | | 643.80 |
| | | $894,310.03 |

Balance Sheet, Wichita Royalty Company, Wichita Falls, Texas, at the Close of Business May 31, 1929.

Liabilities.

| | | |
|---|---|---|
| Notes Payable— | | |
| For Properties Purchased | | $ 34,195.68 |
| Reserve— | | |
| For Depletion of Royalties | | 526,014.84 |
| Nominal— | | |
| Capital Stock Authorized | $1,000,000.00 | |
| Less Unissued | 185,085.00 | 814,915.00 |
| Surplus— | | |
| Per Company Books, this date (—) | | 480,815.49 |
| | | $894,310.03 |

Mr. Rogers:

Also on page 994. of the record of the former trial, dated November 3, 1929:

764 DEFENDANT'S EXHIBIT 30.

Wichita Royalty Company,
Staley Building,
Wichita Falls, Texas.
November 30, 1929.

To the Stockholders of Wichita Royalty Company:

About 5 o'clock on the afternoon of November 7th, Mr. George W. Peckham, Trustee for this Company, had started to his home and family, when he was suddenly stricken with a heart attack and died in a few moments without regaining consciousness.

Mr. Peckham, a comparatively young man, being only 46 years of age, was apparently in good health and quite active in the oil development of the northwest Texas area. He was a man of sterling character, of keen business judgment, and a conscientious and tireless worker, whose death is indeed an irreparable loss, not only to his family and to the community, but to this Company; and while we know that the "Great Reaper" must come for us all, yet we cannot but wonder sometimes, why those of greatest service cannot longer be spared.

Wichita Royalty Company, a Common Law Trust, operates under a Declaration of Trust, which provides for the administration of its affairs under the direction of a sole Trustee. This declaration of Trust pro-

765 vides that in case of the death or resignation of the Trustee, the Judge of the 30th Judicial District of the State of Texas shall appoint a successor. Judge Allan Montgomery of this Court, has appointed the writer as Trustee to succeed Mr. Peckham, and on the succeeding Page there appears a photostatic copy of this appointment.

The writer has spent several years in the service of this Company, but the actual direction is a new responsibility. However, I shall do my best in representing and working to its best interests.

Yours very truly,
E. E. SCANNELL,
Trustee.

(Copy of appointment of E. E. Scannell as Trustee by Allen D. Montgomery, Judge of the 30th District Court on November 12, 1929, was given on succeeding page of this letter—Not reproduced here as same is already in evidence.)

Mr. Rogers:
Also dated September 30, 1929.

(Instrument marked "Defendant's Exhibit No. 32" and reading as follows:)

766 DEFENDANT'S EXHIBIT 32.

Wichita Royalty Company,
1002 Staley Building,
Wichita Falls, Texas.
September 30, 1929.

To the Stockholders of Wichita Royalty Company:

General business conditions in the United States so far this year have been reasonably good, many industries showing substantial gains. The oil industry has shown some improvement and the consumption of oils and gasoline has increased at a rapid rate. For the first five months' period this year, total demand for petroleum, and all products was increased 248,000 barrels daily, or 11% over the same period of 1928. Total supply, which includes domestic production and imports for the same period has shown an increase of 13.5%. Total supply

has exceeded total demand and storage has been increased, but due to the rapid rate of increase in consumption, the number of days' supply at the end of May this year amounted to 212 days, which compared with 221 days' supply on hand at the end of May 1928.

Crude runs to stills in the Mid-Continent area for June where 585,030 barrels daily, for July 565,800, August 555,250 and the estimate for September is 552,300 barrels daily. Even with unfavorable weather conditions prevailing in the Central States consumption of gasoline in the United States was 20% more in May
767 of this year than in the same month last year, and for the five months period the increase has amounted to 16.3%. The estimated June rate of production and imports of petroleum exceed the demand by 4.6%. All of this surplus, however, was in California where large flush production was being developed, but this condition is expected to improve, when their new gas conservation law becomes effective. In fact the Santa Fe Springs field production from the 6,000 foot level has already shown a marked decline from its peak attained on July 20th.

The past three or four years have proven and developed many new ideas in the production of oil. Many of the old shallow fields are now producing from deeper strata. The Tonkawa field in Oklahoma, in which we have a number of properties developed eight sands ranging from 1200 to 4000 feet. In Seminole, the Wilcox sand was found to produce more oil than was previously recovered from all of the shallow sands of the areas, while the New Wilcox sand recently discovered on the edge of Oklahoma City below 6,000 feet gives indications of flooding the crude oil market and further reducing crude prices. In the heart of the Reagan pool in West Texas a well has been flowing more than 2,000 barrels per day for almost a year from a depth of 8,500 feet, and it is not unreasonable to expect that production in the next few years will be obtained from depths of ten thousand feet.

Most all of our properties are now producing from shallower sands and in a number of the areas in which these properties are located, it is firmly believed
768 that deeper oil will be found than is now producing. Our royalty interests are perpetual and should deeper oil be found on them at some future date we shall participate in our proportionate part without expense to us.

Very little net profits have accrued from oil production the last year and a half, due to overproduction and consequent low prices. However, we are very confident that this crude situation will adjust itself at some future date, but just when this will be, no one can safely predict. When this time comes our income should be materially larger and we hope to be in position to resume dividends.

Yours truly,
WICHITA ROYALTY COMPANY.

Balance Sheet Royalty Company, Wichita Falls, Texas, at the Close of Business May 31, 1929.

Assets.

| | | |
|---|---|---|
| Cash in Banks— | | |
| City National Bank ....$ | 1,332.23 | |
| Security National Bank . | 80.67 | 1,412.90 |
| Receivables— | | |
| For sale of oil .. | | 897.17 |
| 769 Property Account— | | |
| Cost plus Appreciation per valuation Reports. No allowance for depletion ... | | 891,356.16 |
| Permanent— | | |
| Furniture and Fixtures Less Depreciation .. | | 643.80 |
| | | $894,310.03 |

Liabilities.

| | | |
|---|---|---|
| Notes Payable— | | |
| For Properties Purchased | | $ 34,195.68 |
| Reserve— | | |
| For Depletion of Royalties ..... | | 526,014.84 |
| Nominal— | | |
| Capital Stock | | |
| Authorized .....$1,000,000.00 | | |
| Less Unissued ..... 185,085.00 | | 814,915.00 |
| Surplus— | | |
| Per Company Books | | |
| This date ..... | (—) | 480,815.49 |
| | | $894,310.03 |

Mr. Rogers:

Also February 2, 1931.

(Marked "Defendant's Exhibit No. 33" and reading as follows:)

770 DEFENDANT'S EXHIBIT 33.

Wichita Royalty Company,
Wichita Falls, Texas.
February 2, 1931.

To the Stockholders of Wichita Royalty Company:

It develops that in 1926 the then sole trustee, George W. Peckham, now deceased, borrowed in the name of the Company from the City National Bank of Wichita Falls, Texas, substantial monies, and from the company's funds paid for a half interest in a suburban site known as Marlborough Addition to the Ctiy of Wichita Falls, Texas, the other half being purchased by executives

of the City National Bank as individuals. At the time of Mr. Peckham's death the title to this interest stood of record in the name of George W. Peckham, an unrecorded deed to the Company being in the safe.

The Declaration of Trust of Wichita Royalty Company shows its general purpose to be the purchase and sale of oil and gas royalties and other oil and gas properties. It would seem the Trustee had no authority to bind the Company in a manner beyond the purpose of the organization.

At the time of this original transaction the Company was free from debt except current bills. Marlborough Addition was not a successful venture and the bank has filed suit. The present Trustee refused payment and refused to yield his present conviction that the
771 bank's executives knew that the Trustee exceeded his authority in the transaction, as he was personally a party to the Marlborough transaction and on the other hand made the loan for the bank to the Company out of which funds the former Trustee paid for this interest by checks cleared through said bank.

The Estate of George W. Peckham being insolvent the bank thereupon filed suit against the Company for a recovery of the monies and the trial is set for February 16, 1931, Homer Lee, City National Bank Building, Wichita Falls, Texas, being in charge of the Company as Receiver.

Attorneys for the bank have ascertained the names of stockholders of the Company and claim under the Texas law the stockholders are personally liable. Courts generally try to protect the interest of non-resident parties and it was thought best to let the matter go to Court so that with all the facts, too many here to detail, the Court could enter a judgment protecting the interests of all.

The Court should know the interest in the matter of the stockholders. Judge W. W. Cook, Wichita Falls, Texas, is the Judge who appointed the Receiver and who will try the case. It is hoped the matter can be

passed to a date later than February 16th, but that matter is entirely with Judge Cook.

Very truly yours,
E. E. SCANNELL,
Trustee.

772 Mr. Rogers:
Also January 15th, 1934.

(Marked "Defendant's Exhibit No. 34" and reading as follows:)

DEFENDANT'S EXHIBIT 34.

Wichita Royalty Company,
Wichita Falls, Texas.
January 15th, 1934.

To the Stockholders of Wichita Royalty Company:

In our letter of February 2, 1931, you were advised that the company was involved in a lawsuit with the City National Bank of Wichita Falls, Texas, and this suit is still pending. Since the filing of this suit many letters have been received, requesting a more detailed explanation of the nature of this litigation, and, urging that everything possible be done to protect the company's interests.

I regret exceedingly that our financial condition does not justify a copy of the Court Record for each shareholder, that you might know exactly what transpired. However, there are 1114 pages of testimony and about 1000 pages of brief have been filed, so you can realize how difficult it is to summarize in a letter, a case so complicated and with so many ramifications. Its general nature, though, is this:

In 1925 and until his death in 1929, George Peckham as Trustee operated your company and at the same time engaged extensively in private enterprises. He and his

brother, W. H. Peckham, joined by J. T. Har-
773 rell, President of the City National Bank, and J. A. Kemp, Chairman of the Bank's Board, as partners, the four bought and developed a residential addition to Wichita Falls known as Marlborough Addition. At a time when the Marlborough partnership owed more than $50,000.00 and George Peckham personally owed more than $27,000.00 to the City National Bank, and large sums were then needed to develop the Marlborough partnership, Peckham's personal credit being exhausted at the bank, he negotiated with his partner, J. T. Harrell, President of the City National Bank, who loaned $40,000.00, issuing a deposit slip to Wichita Royalty Company, Peckham buying his brother's interest in Marlborough and causing Wichita Royalty Company's checks to be drawn on the bank, *payable to the bank*, but deposited to George Peckham's personal account, and then on his personal account he drew checks in payment to the loaning banker and partner, J. T. Harrell of George Peckham's personal debt, other personal checks in payment to W. H. Peckham for George Peckham's purchase of a quarter interest in Marlborough, and the remaining trust money was disbursed from George Peckham's private account, to pay his personal obligations. Later George Peckham executed but did not record, a deed to Wichita Royalty Company for half interest in Marlborough Addition, the deed reciting that Wichita Royalty Company assumed the more than $50,000.00 of indebtedness. The deed was delivered to the company's bookkeeper, who was told to keep the deed off record and to tell no one about it.

Throughout his remaining life Peckham treated
774 Marlborough Addition as his own. You were never advised of this transaction.

Marlborough continued to prove, of course, a losing venture and the bank foreclosed all of its assets and filed suit for more than $14,000.00 deficiency judgment against the Wichita Royalty Company. The bank likewise filed suit in excess of $22,040 as the unpaid

balance of the $40,000.00 loan Harrell made to Peckham and for which Peckham executed the trust's notes. The trust employed counsel and defended the bank's suit upon the theory that the bank was a party to Peckham's misuse of trust funds and other defenses, and as a result of careful investigation made, filed a cross-action based upon approximately fifty checks drawn under Peckham's direction, all payable to the bank on which they were drawn, but each deposited to the personal account of G. W. Peckham and mixed with his private funds and by him checked out upon his personal checks, some of the money going to J. T. Harrell, personally, who made the original loan, some going to the bank in payment of Peckham's personal debt, and the balance expended by Peckham for purposes other than the business of the trust. It is contended that Harrell and the bank were parties to Peckham's wrongs and are liable for all funds used by Peckham personally. The trial Court held that our cause of action was barred by limitation, but the Appellate Court has reversed this ruling.

To make his books balance, Peckham caused the voucher checks to show, and the books to reflect various purposes of the several checks, some bearing
775 the notation to be applied to the Company's debt to the bank, some to pay for or improve Marlborough Addition, and the remainder to pay for oil properties. Of the oil properties so described, some were never conveyed to the trust, some Peckham had no title to, and the rest were transferred to the company by G. W. Peckham as an individual at a price fixed by himself, all without notice to you. No property not producing oil at the time of transfer to the Company ever produced a drop of oil subsequently, although large sums of money were involved.

The trust takes the position that has been sustained by the Appellate Court, that the bank and Harrell were parties to Peckham's personal transactions with the Company's money, that the Company is not bound by any of the transactions in that as to Marlborough Ad-

dition Peckham had no authority to purchase the suburban property, when his only authority as provided under the Declaration of Trust, was to deal in the oil business, and further, that as to Marlborough Addition, no deed was ever delivered and our Company never had any title to it. It is further the contention that as to all properties alleged to have been transferred to the Company, whether residential property or oil property, Peckham could not bind the company when he was both seller and buyer, profiting substantially in the transactions and unloading properties at a price which he personally had paid long before, but which in fact became valueless. That though he died insolvent,

776 yet the bank is liable for Peckham's obligations to the Company because it was a party to Peckham's conduct and participated therein. These matters your present Trustee submitted to the Court as soon as he was advised of the rights of the Company and numerous letters have been received from stockholders commending him on his trying to prevent the bank's collecting an unjust debt and from taking the remainder of the assets of the Company, and also in his endeavor to recover for the Company all that it has lost under the former Trustee through the bank's participation and that of its president.

The Receivership granted in 1931 was appealed from and dissolved by the Court of Civil Appeals. Upon trial of the bank's cause and the Company's cross-action, the District Court gave judgment for the Bank, but this judgment has been reversed by the Court of Civil Appeals at Fort Worth. Motions for rehearing are pending and that Court has not rendered its final decision, but regardless of which way it goes, the case will probably be appealed to the Supreme Court.

Upon District Court judgment in favor of the bank our property in Oklahoma was attached and pipe line companies in Texas and Oklahoma were advised not to pay out runs and Company properties and income have been tied up since February, 1932. So you see it has

been almost impossible financially to prosecute this suit. I have always believed this case should never have come to Court, but should have been straightened out by the Peckham family and the bank as was promised me when I first agreed to accept the Trustee-
777 ship, and in the writer's opinion it would have been done, had not those involved believed that sufficient pressure could be brought against the Trustee and to so intimidate him as to cause him to sacrifice your interests, and also believed that, in any event, if all of the Company's properties and income were tied up, it would not be financially able to protect its interests inasmuch as the shareholders were widely scattered and lived outside the State of Texas. Naturally the fact that the shareholders were scattered placed a greater responsibility upon the Trustee and as your sole representative, and at your solicitations, I considered it my duty to take the stand I have, notwithstanding the cost to me personally. However, I feel that in justice to myself, you should know that taking this stand for the Company and its rights has been done at a tremendous sacrifice to me personally both financially and in business relationships. Pressure that has been brought to bear from every direction has been most trying on our lawyers and myself, and in frankness I will admit that had the cause been less just, I would have at times been disheartened. However, I have every confidence in our Courts and believe they will find in our favor.

In the law firm of Kilgore and Rogers of Wichita Falls, we have had the very best and ablest legal counsel in the State of Texas, and with the recent addition of Mr. Charles Black of Austin, Texas, to assist in presenting our case before the Supreme Court of Texas, know the interests of the Company are receiv-
778 ing the best possible legal representation.

The City National Bank of Wichita Falls, is in liquidation and a reorganized bank of similar name has succeeded it. Our Counsel however advise that insofar as our claims extend we are protected. If we

lose our case, which to me seems neither reasonable nor equitable, of course the bank will take all of the assets of the Company in satisfaction of their claims as they originally set out to do.

The writer has deeply appreciated your letters of confidence and encouragement and I shall be glad to hear from you with any suggestions you may have to offer at any time, for I realize you are interested in and entitled to all information relative to your Company and this lawsuit. However, since the very life of the Company depends upon the favorable outcome in this litigation it has been entirely necessary to concentrate all of our limited resources upon this case and forego every expenditure possible to accomplish this.

Trusting that 1934 will bring to all of us much happiness and prosperity, I am,

Yours very truly,
E. E. SCANNELL,
Trustee.

P. S.—Letters we are receiving indicates there have been many changes of address since our last communication was set out, and we therefore suggest that each of you send in your correct mailing address for verification with our records.

779 The Witness:

During my trusteeship and during Mr. Peckham's trusteeship, we rarely ever had any visits from any of the stockholders—I don't recall ever having any visits until after I became trustee, and such visitor or visitors came after the filing of this suit.

While I was working for Mr. Peckham, I sent out to the stockholders such communications at the direction of Mr. Peckham, and no other information was sent out than as disclosed by those letters, and no other information was communicated to the stockholders, so far as I know. The books and records kept in the office

of the Wichita Royalty Company were not inspected by the stockholders.

Soon after George Peckham died, November 7, or 9, 1929, I begun to get things in shape and saw to our records, the loans at the bank, the cash and everything, to see if it checked out ok. I came to the bank and looked up the liability ledger of the Wichita Royalty Company, which did not correspond with the amount of liability as reflected upon the royalty company's books. I pursued an examination of the respective records to determine wherein the difference lay. I found that the checks reflected upon the books of the royalty company as having been issued to discharge, in part, the Wichita Royalty Company's liability to the bank, had not, in fact, been credited upon that liability. I have those checks, here they are. I will give the number, the date, and the amount of each check; the first check
780 was No. 571, in the amount of $2,000.00, dated January 1, 1927; the next one dated February 19, 1927, No. 579, and the amount of $2,500.00; March 23, 1927, No. 591, $2,000.00; June 18, 1927, No. 620, $1,200.00; August 15, 1927, No. 635, $1,500.00; October 14, 1927, No. 650, $2,400.00; November 25, 1927, No. 657, $1,800.00; April 20, 1928, $1,850.00, No. 710. The above checks were all payable to the bank. The Wichita Royalty Company used the voucher check form. As originally written, it is about twice the width of an average counter check with the voucher attached to the upper half of it, and then perforated about the center, the upper half, the voucher half of it is transmittal, and states what the check is given for, the purpose of it. When originally written those checks were upon the typewriter, underneath there was an office copy retained, I have those copies. The first one is No. 571, in the amount of $2,000.00, made payable to the City National Bank dated January 19, 1927, and was marked "For land improvement to apply on paving excess strip of Marlborough Addition."

When I identify certain checks, by number, date and amount, as having been payable to the plaintiff bank, for a purpose to have been applied upon the liability record of the Wichita Royalty Company, I am testifying from a copy that is before me. I have the original checks and the book entries on them.

I will take off in the order of their occurrence, the date and the payee and the amount of the check, and what the voucher contained when the check was issued;

781 the first check was No. 620, dated June 18, 1927, payable to the City National Bank for $1,200.00 and the duplicate of the voucher stated that it was for notes payable to apply on notes for money borrowed from the City National Bank. That check is perforated paid June 19, 1927. The next one, No. 635, dated August 16, 1927, made payable to the City National Bank for $1,500.00, and the voucher stated that it was for notes payable to apply on note held by City National Bank.

Upon G. W. Peckham's death, I took those checks over to the bank in an effort to reconcile my books with theirs, presented those checks and asked where they were applied. The first check, No. 620, was deposited to the credit of G. W. Peckham on June 18, 1927; I do not think that check was credited upon the Wichita Royalty Company's liability record with the bank. The next check, No. 635, was deposited to the credit of G. W. Peckham, August 16, 1927. The next one, No. 650, dated October 14, 1927, payable to the City National Bank in the amount of $2,400.00, drawn on the City National Bank, the voucher showed that it was notes payable to apply on money borrowed from the City National Bank and was so entered on the books of the Wichita Royalty Company as a credit on notes payable. The next item, deposited to the account of G. W. Peckham, October 15, 1927, perforated paid October 15, 1927. Number 657, dated November 25, 1927, payable to the City National Bank in the amount of $1,800.00, the voucher no-

782 tation shows, interest, expense to interest on note held by the City National Bank. During

the period of time in question the Wichita Royalty Company did not owe any other money to the City National Bank than the City National Bank of Wichita Falls, Texas. This check, No. 657, was deposited to the credit of G. W. Peckham on November 25, 1927. The next check is No. 710, dated April 20, 1928, made payable to the City National Bank in the amount of $1,850.00, perforated paid April 23, 1928, deposited to the credit of G. W. Peckham on November 23, 1928. When I say deposited to the credit of G. W. Peckham, I mean it was deposited in the City National Bank of Wichita Falls, Texas. The next check, No. 752, dated September 27, 1928, made payable to the City National Bank in the amount of $424.66, and canceled on 9-27-28; deposited to the credit of G. W. Peckham on September 27, 1928; the voucher notation showed that it was for interest expense on notes held by the City National Bank. All of those checks that I have now testified about, had the voucher notation indicating its issuance for the purpose of applying upon the Wichita Royalty Company's obligation to the City National Bank.

You now hand me a group of checks issued by the Wichita Royalty Company and each payable to the order of G. W. Peckham, which I will identify by number, and the notation made upon the voucher, etc.; No. 1,217, dated February 5, 1923, for $500.00, issued to G. W. Peckham and deposited to the credit of G. W. Peckham in the City National Bank. The next is No. 1,245, dated March 1, 1923, $500.00, drawn on the Security
783 National Bank, deposited to the credit of G. W. Peckham; the voucher notation on check No. 1,217 was "Salaries, executives, for the month of January, 1923." The voucher notation on No. 1,245, was "Salaries, Executives, month of February." All of these checks that I have testified about have been heretofore identified in the testimony of Mr. Carson, and described in detail. I am now calling the number of each check for identification by reference to other testimony and am giving the voucher notations, as contained in the records

of the Wichita Royalty Company, being a copy of the voucher that was attached to the check itself, the perforated line at the time the check was issued. The next check is No. 1,280, dated March 31, 1923, $500.00, "Executive Salaries for March, 1923." The next check is No. 1,310, dated May 1, 1923, $500.00, "executive salaries for the month of April." The next is No. 1,339, this check has been misplaced—we have it—it is dated June 1, for $500.00, and the voucher reads, "Executive Salaries for the month of May." No. 13, dated July 3, 1923, for $500.00, "Executive Salaries for the month of June, 1924." The next number is 34, August 1, 1923, $500.00, "Executive salaries for the month of July, 1923." The next is No. 54, August 31, 1923, $500.00, "Salaries, Executives, month of August." The next is voucher No. 73, dated September 30, 1923, $500.00, "Executive to October 1, 1923." No. 92, October 31, 1923, $500.00, "Salaries, executives October salary." The words "October Salary" is written in pencil, but not on
784 the voucher. That looks like my handwriting.

The next is voucher No. 134, dated December 19, 1923, $500.00, and the voucher reads "Salaries, Executives," and a pencil notation, "November," the pencil notation was not in the voucher, it was probably when checking the books and posting the book it was not on there, it was written on there. The next is voucher No. 149, dated January 30, 1924, $500.00, "To executive salaries for January, 1924." Next No. 171 March 1, 1924, $500.00, "Salaries, Executives month of February." Next is voucher No. 188, March 31, 1924, $500.00, "Executive salaries, March, 1924." Next is voucher No. 205, April 30, 1924, $500.00, "Executive salaries, April, 1924." I will continue on by numbers; voucher No. 232, June 28, 1924, "Salaries Executives for June." Voucher No. 247, July 30, 1924, $500.00, "Executive Salaries for the month of July, 1924." No. 272, dated September 30, 1924, $500.00, "Salaries, Executives, for September, 1924." Voucher No. 286, October 31, 1924, $500.00, "Salaries. Executives, for the month of October, 1924." No. 304,

November 29, 1924, $500.00, "Salaries, Executives for November, 1924." Voucher No. 320, December 31, 1924, $500.00, "Salaries Executives for December." No. 338, February 24, 1925, $400.00, "Salaries Executives January, 1925." Voucher No. 347, February 25, 1925, $400.00, "Salaries, Executives, February, 1925." Voucher No. 357, March 31, 1925, $400.00, "Executive salaries, March, 1925." Voucher No. 370, April 30, 1925, $400.00. "Executive salaries for April, 1925." Voucher No. 378,
785 May 25, 1925, $400.00, "Executive salaries for month of May, 1925." Voucher No. 388, June 30, 1925, $400.00, "Executive salaries for June, 1925." Voucher No. 400, July 31, 1925, $400.00, "Salaries executives for month of July, 1925." No. 411, August 31, 1925, $400.00, "Salaries, Executives, for the month of August, 1925." Voucher No. 422, September 30, 1925, $400.00, salaries executives for September, 1925." No. 433, October 31, 1925, $400.00, "Salaries Executives for the month of October, 1925." No. 444, December 1, 1925, $400.00, "Salaries Executives for the month of November, 1925." No. 453, December 31, 1925, $400.00, "Salaries Executive for the month of December, 1925." No. 466, January 30, 1926, $400.00, "Executive Salaries for January, 1926." No. 477, February 27, 1926, $400.00, "Salaries Executive for the month of February, 1926." No. 489, April 1, 1926, $400.00, "Salaries Executives for the month of March, 1926." No. 497, May 3, 1926, $400.00, "Salaries Executive for the month of April, 1926." No. 505, May 30, 1926, $400.00, "Executive Salaries, Salary of Trustee for May, 1926." No. 512, June 30, 1926, $400.00, "To executive salaries for month of June, 1926." No. 523, July 31, 1926, $400.00, "Executive Salaries, salary for month of July, 1926." No. 537, September 30, 1926, $400.00, "Executive Salaries, to salaries for month of September, 1926." No. 545, October 30, 1926, $400.00, "Executive salaries for the month of October, 1926." No. 552, November 30, 1926, $400.00, "Executive Salaries for the month of November." No. 554, December 31,
786 1926, $400.00, Salaries Executive for the month of December, 1926."

No. 574, January 31, 1927, $400.00, "Executive Salaries for the month of January, 1927." No. 581, February 28, 1927, $400.00, "Executive salaries for the month of February, 1927." No. 594, March 31, 1927, $400.00, "Salaries Executives for the month of March, 1927." No. 604, April 30, 1927, $400.00, "Salaries executives for the month of April, 1927." No. 614, May 31, 1927, $400.00 "Salaries executives for the month of May, 1927." No. 623, June 30, $400.00, "Salaries executives for the month of June, 1927." No. 630, July 31, 1927, $400.00, "Executive salaries the month of July, 1927." No. 637, September 3, 1927, $400.00, "Salaries executive for the month of September, 1927." No. 653, November 1, 1927, $400.00, "salaries executive for the month of October, 1927." No. 659, November 30, 1927, $400.00, Salaries Executive for the month of November, 1927." No. 672, December 27, 1927, $400.00, "Salaries executives for the month of December, 1927." No. 684, January 31, 1928, $400.00, "Salaries executives for the month of January, 1928." No. 692, February 29, 1928, $400.00, "Salaries executives for the month of February, 1928." Voucher No. 701, March 31, 1928, $400.00, "Salaries Executives for the month of March, 1928." No. 713, April 30, 1928, $400.00 "Salaries executives for the month of April, 1928." No. 720, May 31, 1928, $400.00, "salaries executives for the month of May, 1928." No. 727, July 2, 1928, $400.00, "salaries executives for the month of June, 1928." No. 738, July 31, 1928, $400.00 "Executive salaries for the month of July, 1928." No. 747, August 31, 1928, $400.00, "salaries executives for the month of August, 1928." No. 754, October 1, 1928, $400.00, "Salaries executive for the month of September, 1928." No. 762, October 31, 1928, $400.00, "Salaries executives for the month of October, 1928." No. 767, November 30, 1928, $400.00, "Salaries executives for the month of November, 1928." No. 775, December 31, 1928, $400.00, "Salaries executives for the month of December, 1928." No. 785, January 30, 1929, $400.00, "Executive salaries for the month of January, 1929."

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No. 792, March 1, 1929, $400.00, "Salaries Executives for the month of February, 1929." No. 797, March 26, 1929, $400.00, "Salaries executives for the month of March, 1929." No. 806, April 30, 1929, $400.00, "Salaries Executives for the month of April, 1929." No. 813, May 31, 1929, $400.00, "Salaries executives for the month of May, 1929." No. 829, July 31, 1929, $400.00, "Salaries executives for the month of July, 1929." After No. 813 should be 821, dated July 1, 1929, for $400.00, "Salaries executives for the month of June, 1929." That is payable to G. W. Peckham and drawn on the City National Bank. Independently of the voucher, that original check was drawn on the City National Bank and deposited to G. W. Peckham's account with the bank. The next is No. 829, July 31, 1929, $400.00, "Salaries Executives for the month of July, 1929." No. 837,

August 30, 1929, $400.00, "Executive salaries in

788 payment for August, 1929." No. 843, September 30, 1929, $400.00, "Salaries executive for the month of September, 1929." No. 852, October 31, 1929, $400.00, "Salaries executives for the month of October, 1929." Those are the only salary checks I find payable to G. W. Peckham. I believe I missed No. 115, "Salaries executive for the month of February, 1923," $500.00, payable to G. W. Peckham, on the City National Bank. The last check was cashed rather than deposited—that constitutes all the salary checks I find. No part of the proceeds of those checks were ever refunded to the royalty company or paid by G. W. Peckham to it.

I have my voucher book, wherein voucher No. 478 is reflected, it is dated March 6, 1926; I have the voucher and the carbon of the original check in the bound volume before me. As a matter of fact, all of the vouchers and all of the checks that have been drawn are in permanent form bound by period, and form a part of the permanent records of the Royalty Company. The books is composed of pieces of paper twice the size of the checks of the Royalty Company. On the bottom of each such

office copy and voucher is a carbon copy of that which is written on typewriter on the check, as issued, as a rule the voucher notation would be written upon the top part of the voucher check when released. The voucher before me, No. 478, the voucher notation is part carbon and partly original typewriting. The carbon on the original voucher is the amount of money involved in the voucher and the copied part
789 of the check itself is the date, March 6, 1926, Voucher No. 478, the payee, City National Bank, and the amount of money, $17,623.70. The remaining portion of the voucher notation is in original typewriting. In my opinion the reason a portion of this is in original typing and the other portion is in typing, is that George Peckham, he probably called me over the telephone and told me to bring him a check for this amount of money, and told me to bring it over there, and he would give me what to write on it—that is probably the reason for it, and is my explanation. It is my recollection that after the form of the check was filled out, the payee and the amount, and signed thereafter, Mr. Peckham gave me instructions as to what to put on the voucher to show the purpose of issuance of the check. Later, that is, later than his request, he presented to me a deed signed by him, and asked me to acknowledge it, on April 10, 1926. That is the deed in respect to the Marlborough Addition and he told me to take it to the office and put it in the safe and keep it and not let anybody see it. He told me not to record it. I never showed that deed to anybody until this lawsuit was filed. That which was written in the original typewriting upon the voucher of check No. 478, as kept in the office, as disclosed by the voucher of record, which I have before me, is "Real Estate, City Property." Underlined, and then it reads, "To apply on purchase of one-half undivided interest in Marlborough Addition, consisting of 252 lots, to the City of Wichita Falls, Texas, total consideration of $49,-
790 566.20. This check No. 478, for $17,623.70, and check No. 479, of this date, for $6,000.00, repre-

sents the total cash consideration. For the balance of the consideration our interest is subject to $23,215.50, due in one, two and three years from September 19, 1925, and $2,727.00 due in one, two and three years from January 8, 1927. This indebtedness being secured by twelve vendor lien notes against the property which draws eight percent per annum, payable to the Highland Irrigation Company. See Journal entries Nos. 27 and 28, March 6, 1926." The proceeds of this $17,623.17 check was made to the City National Bank and deposited to the account of G. W. Peckham in the City National Bank. On the same day, March 6, 1926, Mr. Peckham requested me, for him as trustee, to issue check No. 479, for $6,000.00. That check was payable to the order of the Security National Bank, I don't know to whose credit it was deposited in that bank, it is drawn to the order of the Security National Bank on the City National Bank. I can check my records and tell you tomorrow whether or not that check was deposited to G. W. Peckham's account with the Security National Bank.

On voucher record No. 479, is the description, the purpose for which the check was issued, likewise the original typewriting. That original typewriting says, "Real Estate, City property. To apply on purchase of one-half undivided interest in Marlborough Addition, consisting of 252 lots, to the City of Wichita Falls, Texas. Total consideration is $49,566.20. This check No. 479,
791 for $6,000.00, and check No. 478 for $17,623.70 represents the total cash consideration. For the balance of the consideration our interest is subject to $22,216.50, due in one, two and three years from September 19, 1925, and $2,727.00 due in one, two and three years from January 8, 1927. This indebtedness being secured by twelve vendor lien notes against the property which draw eight percent interest per annum and are payable to the Highland Irrigation Company. See journal entries Nos. 27 and 28, March 6, 1926."

I will take up the remaining Marlborough checks, and by number identify them with the voucher notation, and

tell whether or not the quoted part of the voucher showing its purpose, to be the original or in carbon or typewritten; voucher No. 485, dated March 31, 1926, drawn on the City National Bank in the amount of $7,500.00; the amount of money on the upper one-half of the voucher, and on all of the vouchers seems to be in carbon. But the descriptive matter seems to be in original typewriting, and this says, "Real Estate Improvement to apply on our half interest in improving Marlborough Addition, Wichita Falls, Texas." "Improvement consisting of water, lights, gas, sewerage and grading and paving streets." Voucher No. 503, dated May 20, 1926, to G. W. Peckham for $3,000.00, reads, "To improvements on Marlborough Addition." On the upper half of the voucher, carbon copy. Voucher No. 507, May 29, 1926, made to the order of City National Bank for $1,500.00, and reads, on the upper half, "Marlborough Addition, to apply on our portion of improvements." The carbon on that, No. 510,
702 dated June 16, 1926, pay to the order of City National Bank, $4,500.00, the upper half of the voucher reads, "To apply on improvements of Marlborough Addition in our proportion," and the office voucher is all carbon. No. 519, July 13, 1926, pay to the order of City National Bank, $1,000.00, on the upper half of the voucher it reads, "To apply on improvements of Marlborough Addition, our proportion." It is all carbon, on the office copy. Voucher No. 525, dated August 2, 1926, for $4,000.00 payable to the order of the City National Bank, the lower half of the office copy of the voucher is in carbon, and the upper half seems to be the original, and reads, "Notes payable to apply on notes due 9-19-26, to Highland Irrigation Company, for land in fee." I probably either got that information when I took the check from him, or sometime later, I couldn't tell you which. Part of the time my office was in the same building with Mr. Peckham, most of the time it was over in the Staley Building, and his office here. We never did have an office right with him. George Peckham conducted an independent brokerage business in

leases, not only brokerage, but investments, himself. The next is voucher No. 532, August 27, 1926, Pay to the order of City National Bank, $4,357.68, the lower half of the voucher is office voucher, carbon, and the upper half is the original typing and it reads, "Notes payable to apply on note due 9-19-26, to Highland Irrigation Company for land in fee, $3,738.50." The next item, "Interest expense on above note, eight percent for one year,
793 $619.08, total $4,357.58." No. 556, dated December 22, 1926, pay to the order of G. W. Peckham, $700.00; the office voucher is all carbon and the upper half reads, "Interest expense to apply on two notes of $7,738.50, at the rate of eight percent per annum. This interest applying to the period 9-10-25, to 9-19-26, Highland Irrigation Company notes." No. 556-a, dated December 22, 1926, pay to the order of G. W. Peckham, $536.16; office copy of the voucher is of carbon and the other half reads, "Interest expense to apply on two notes of $7,738.50, at the rate of eight percent per annum, this interest applying on period 9-19-25, to 9-19-26; Highland Irrigation Company note for balance of interest paid see check No. 556." I will state that I actually typed most of the notations if not all of them, and I got that information from Mr. Peckham, he instructed me to make those notations. That applies not alone to these checks, but to all checks that I may testify to in this hearing; in other words, I kept these books under Mr. Peckham's care and supervision, and at his direction. I kept the books like Mr. Peckham told me to keep them. Mr. Peckham was not a bookkeeper. The next one is No. 571, January 19, 1927, pay to the order of City National Bank, $2,000.00; the office copy of the voucher is all in carbon and the upper half reads "Land improvements to apply on paving excess strip Marlborough Addition." Voucher No. 579, February 19, 1927, City National Bank, $2,500.00; the August copy is all in carbon and the upper half reads,
"land in fee to pay on paving strip, Marlborough
794 Addition." The next one is No. 880, dated January 24, 1930, pay to the order of Marlborough

Addition, $1,500.00; the office copy of the voucher is all in carbon and the upper half of it reads, "Notes receivable, Texas Investment Company, to loans Texas Investment Company, in which Wichita Royalty Company owns half of the capital stock for one year, at interest at eight percent, money to be used for current obligations, etc., on Marlborough Addition, Wichita Falls, Texas." That was after I became trustee, and showed that it was a loan by me to the Texas Invstment Company. The next is No. 908, May 13, 1930, pay to the order of Texas Investment Company, Wichita Falls, $500.00; the voucher is all in carbon and reads in the upper half, "Interest on Marlborough Note, $500.00." And then says, a bookkeeper's notation which reads, "Notes receivable, Texas Investment Company of Wichita Falls, Texas." That likewise, is dated after George Peckham's death.

The aggregate total of those checks, with the voucher notation shows the Marlborough transactions concerning which I testified yesterday afternoon, are approximately $57,219.44.

After I became trustee, and after the death of Mr. Peckham, I arrived at an amount of a little over nineteen thousand dollars that would balance the records, as I understood them to be, between the trust and Mr. Peckham, with respect to the transactions. I employed Mr. Davenport to prepare an application embodying those figures to be presented, and presented them to the administrator of the estate of G. W. Peckham.

795 When it was determined there was a shortage in Mr. Peckham's account with the royalty company I took it up with Bill Peckham and we talked it over, and George was a good personal friend of mine, my employer, and I thought a lot of him and we agreed that it would be to the best interest of his family, and that it would not hurt the trust to keep it quiet for a little while, until they could get their insurance matters adjusted. I knew that Mr. Peckham had quite a bit of stuff, had over $100,000.00 life insurance, and Bill could very easily adjust that without sacrifice to anyone,

and we agreed between us it would be done, in order to keep the stockholders from coming in and raising any disturbance until it was settled. The insurance was payable to Mrs. Peckham, and not to his estate.

I have before me a copy of the $19,000.00 items; the items are checks that were supposed to have been applied to our account, I mean the Wichita Royalty Company liability account at the City National Bank, and we later, we determined through checking up, that the checks were deposited to Peckham's personal account and some of them had never been credited to the liability account at all. We checked that with the bank's record, got a copy of our liability sheet and checked it back against the books, and applied, as against those charges, certain payments that G. W. Peckham had paid from his personal account upon the liability record of the Wichita Royalty Company, we gave credit for all deposits. Then we set up on our books those items so that our books would correspond with the books of the bank.

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Other items entered into that account, the sale of two properties, one to the Mineral Spirits Company and one to the Petroleum Royalties Corporation. Our records showed that that was accounts receivable; the trustee had conveyed those properties to those companies. $5,700.00 is what our books showed that we got for each property. We had not received it, the first entry on it was accounts receivable. Later George Peckham instructed us to apply it against the accounts of the City National Bank, against the liability, payment on notes; but it had not, in fact, been so applied as payment on such notes, nor had it been deposited to the account of the Royalty Company. One of those items is the transaction concerning which the escrow file has heretofore been introduced, with payments made under it, totaling $6,048.00; the other is the cashier's check of the Wichita State Bank and Trust Company which was deposited to G. W. Peckham's account in the City National Bank and heretofore identified in evidence. The total amount of payments that we had made to the liability account,

that were accounted for, was for $26,650.00. We found that George Peckham had made credits of four items, totaling $6,821.33, which left the balance of $19,828.57, that we filed in our claim. I did not tell Mr. Davenport any of the other facts, except as I have disclosed. That statement was prepared and filed with the administrator at a time when I had, and the administrator had, the agreement that I have heretofore testi-
797 fied to concerning keeping the matter quiet and not disclosing it. We carried it along, three or four or probably five months, it seems to me it was around May before I made any disclosure to anyone in regard to it or talked to anyone about it—just kept it quiet. During that time I was present at meetings of the stockholders and directors of the Texas Investment Company, I remember Mr. Humphrey was at some of those meetings, Mr. Harrell and Mr. Will Gray.

This deed to an interest in Mr. Peckham's original purchase of the property known as the Marlborough property was not recorded at that time, nor was it ever exhibited to any stockholder of the Wichita Royalty Company. It has never been recorded to my knowledge.

Certain properties on the records of the Wichita Royalty Company, are for certain numbers. The Grimshaw is known as No. 71, G. W. Peckham did acquire an interest in the Dowdy Survey, of a quarter of the minerals, February 12, 1923, and the deed to him is recorded in Volume 991, page 544 of the deed records of Young County. He paid $8,000.00 for that quarter mineral interest. There was some activity down there in the area of the Grimshaw. I have dealt in and observed the purchase and sale of oil and gas properties for some fifteen or more years, and I know that the price of oil properties adjacent to activities are of a fluctuating value. Mr. Peckham executed a deed to the quarter interest in the minerals that he obtained, I have the deed here.

798 Mr. Rogers:

We offer the deed in evidence.

(Marked "Defendant's Exhibit 35" as follows:)

DEFENDANT'S EXHIBIT 35.

Mineral deed. From A. Grimshaw and wife, Zora Grimshaw, to G. W. Peckham, conveying an undivided 4/160ths interest in all of the oil and gas and other minerals in and under or that may be produced from the following described land situated in Young County, Texas, to-wit:

All of B. R. I. R. No. 39, J. E. Dowdle Survey, Abstract No. 2,215, containing 160 acres of land.

Dated February 12, 1923. Revenue stamps $8.00.

Duly acknowledged by A. Grimshaw and wife, before A. C. Martin, notary public, in and for Comanche County, Texas, February 12, 1923.

Filed for record May 16, 1923, recorded, Vol. 99, page 545, Deed Records, Young County, Texas.

Mr. Rogers:

We offer in evidence the deed from George Peckham to the Wichita Royalty Company.

(Marked "Defendant's Exhibit 36.")

DEFENDANT'S EXHIBIT 36.

Deed from George W. Peckham to Wichita Royalty Company. Consideration $10.00 and other valuable consideration, cash in hand paid by Wichita Royalty Company. Conveying 3/16ths interest in and to all of the oil and gas and other minerals in and under, or that may

be produced from the following described land
739 situated in Young County, Texas.

All of B. R. I. R. No. 39, J. E. Dowdle Survey, Abstract No. 2215, containing 160 acres of land.

Dated March 12, 1923.

Duly acknowledged by G. W. Peckham, before E. A. Deaton, Notary Public in and for Wichita County, Texas, on May 18, 1923.

Documentary stamps, $7.50.

Filed for record 18th day of May, 1923, at 10:45 o'clock A. M., and recorded May 23, 1923, at 10:40 o'clock A. M., in the deed records of Young County, Texas.

The Witness:
Mr. Peckham transferred the remaining part of the interest that he acquired from Grimshaw, to F. O. Harrell, for the Perpetual Royalty Syndicate, for which F. O. Harrell paid $2,500.00.

Mr. Rogers:
We offer the instrument in evidence.

(Marked "Defendant's Exhibit 37" as follows:)

DEFENDANT'S EXHIBIT 37.

G. W. Peckham to F. O. Harrell, consideration $10.00 and other valuable consideration. Conveying 1/16 interest in and to all of the oil, gas and other minerals in

and under and that may be produced from the following described land situated in Young County, Texas, to-wit:

All of B. R. I. R. No. 39, J. E. Dowdle Survey.

Abstract No. 2215, containing 160 acres of land.

Together with the right of ingress and egress at all times for the purpose of mining, drilling and
800 exploring said land for oil, gas and other minerals, and removing the same therefrom.

Dated May 12, 1923.

Duly acknowledged by G. W. Peckham before Mrs. Fannie Brewster, Notary Public in and for Wichita County, Texas.

Filed for record May 24, 1923, at 9:00 o'clock A. M. Recorded May 24th day of May, 1923, at 9:00 o'clock A. M. in the deed records of said county, in volume 99, on pages 587.

The Witness:

J. T. Harrell and F. O. Harrell are not related to each other.

The checks of Wichita Royalty Company, issued in payment of this conveyance from G. W. Peckham as an individual to his trust, are No. 1,252, dated March 10, 1923, for $2,500.00, payable to the order of the City National Bank; next No. 1,291, April 9, 1923, paid to the order of G. W. Peckham, $2,516.67; No. 1,325, May 11, George W. Peckham, pay to the order of George W. Peckham, $2,533.00; those are voucher checks that I refer to, rather than voucher notations.

That voucher record shows that the check was issued to apply on last payment of royalty No. 71, 3/128ths total production, 168 acres, Grimshaw farm, Young County, Texas, $2,500.00. Check dated March 10, 1923, No. 1,253, payable to the order of City National Bank, $2,500.00. I do not know why the drawee bank gave B. L. Fain credit for that item, rather than applying it to
801 some other purpose. I do not know whether B. L. Fain had an interest in that property or to its sale or not. The notation that is placed upon the voucher is placed there at the direction of George Peckham.

The voucher notation on the next check, No. 1,291, payable to G. W. Peckham, in the amount of $2,516.67, voucher records show, to apply on last payment of Royalty No. 71, Grimshaw tract, Young County, Texas, payment of $2,500.00, interest $16.67. In order that I will not have to repeat, I will state that the voucher notation as contained in my permanent books were placed there by me under the instructions and directions of G. W. Peckham, trustee. Check No. 1,325, dated May 11, 1923, pay to the order of George W. Peckham for $2,533.33, voucher shown to apply on last payment of royalty No. 71, Grimshaw tract, Young County, Texas, $2,500.00; interest $33.33, total $2,533.33. The total that was paid to Mr. Peckham for that fractional interest to that which he had acquired from Mr. Grimshaw, plus interest, was $7,500.00. That property has produced minerals and the proceeds of their sale has been deposited to the account of and received by Wichita Royalty Company. I have a condensed statement of the oil runs and the amount received from them. I now have before me the original production records of the Wichita Royalty Company, which records have been heretofore made voluntarily available to the other parties in this law suit. The condensed statement is taken off of the oil runs from what is known as Grimshaw No. 71.

802 Mr. Rogers:

We offer the statement in evidence, in lieu of the books themselves.

(Marked "Defendant's Exhibit 38," as follows:)

803 DEFENDANTS' EXHIBIT 38.

"Royalty No. 71—Grimshaw.

Sale of Oil and Gas.

| Period From | Period To | | Amount |
|---|---|---|---|
| 3-12-23 | 3-31-23 | Check of G. W. Peckham dated 5-16-23 ..... | 234.6 |
| 4- 1-23 | 4-30-23 | Check of G. W. Peckham dated 5-28-23 ..... | 302.9 |
| 5- 1-23 | 5-31-23 | Sale of oil. No gas..... | 295.4 |
| 4- 1-23 | 4-30-23 | " " ..... | 95.0 |
| 5- 1-23 | 5-31-23 | " " ..... | 71.6 |
| 6- 1-23 | 5-31-24 | " " ..... | 2,145.1 |
| " | " | Sale of gas ..... | 63.8 |
| 6- 1-24 | 5-31-25 | Sale of oil. No gas. Chaney-Humble ..... | 607.7 |
| 6- 1-24 | 5-31-25 | Sale of oil. Gulf..... | 327.4 |
| " | " | Sale of gas. " ..... | 15.0 |
| 6- 1-24 | 5-31-25 | Sale of oil. Humble Cosden | 451.8 |
| 6- 1-24 | " | Sale of Gas ..... | 3.7 |
| 6- 1-25 | 5-31-26 | Sale of Oil. Gulf..... | 432.4 |
| " | " | Sale of Gas ..... | 15.0 |
| 6- 1-25 | 5-31-26 | Sale of Oil. Humble Chaney | 325.8 |
| " | " | Sale of Gas ..... | 11.2 |
| 6- 1-25 | 5-31-26 | Sale of Oil. Humble Cosden | 380.8 |
| " | " | Sale of Gas ..... | 3.74 |
| 6- 1-26 | 5-31-27 | Sale of Oil. Gulf..... | 318.50 |
| 6- 1-26 | " | Sale of Gas ..... | 11.28 |
| 6- 1-26 | 5-31-27 | Sale of Oil. No Gas. Humble-Chaney ..... | 262.03 |
| 6- 1-26 | 5-31-27 | Sale of Oil. Prairie-Mid Con. | 240.86 |
| 6- 1-26 | 5-31-27 | Sale of Gas ..... | 3.74 |
| 6- 1-27 | 5-31-28 | Sale of Oil. Gulf ..... | 140.59 |
| " | " | Sale of Gas ..... | 11.28 |